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Canada

UNIVERSITY OF ALBERTA

SHARED QUALITIES OF EFFECTIVE DIVORCE MEDIATORS

BY

BETTY STEVENS-GUILLE

A THESIS

SUBMITTED TO THE FACULTY OF GRADUATE STUDIES AND

RESEARCH IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR

THE DEGREE OF MASTER OF EDUCATION IN COUNSELLING PSYCHOLOGY

DEPARTMENT OF EDUCATIONAL PSYCHOLOGY

EDMONTON, ALBERTA

SPRING, 1990

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THE UNDERSIGNED CERTIFY THAT THEY HAVE READ, AND RECOMMEND TO THE FACULTY OF GRADUATE STUDIES AND RESEARCH FOR ACCEPTANCE, A THESIS ENTITLED "SHARED QUALITIES OF EFFECTIVE DIVORCE MEDIATORS"

SUBMITTED BY BETTY STEVENS-GUILLE

IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE DEGREE OF MASTER OF EDUCATION

IN COUNSELLING PSYCHOLOGY

.....

PROFESSOR L. EBERLEIN (SUPEVISOR)

.....

PROFESSOR J. OSBORNE

.....

DEAN T. CHRISTIAN

DATE: Dec 17, 1989

Dedication

I would like to dedicate this thesis to my husband Michael, and my children, Karen, Robin, Gillian, and Iain who have never questioned my need to know.

Abstract

The purpose of this study was to investigate qualities common to effective divorce mediators from the educational disciplines, of law and psychology. A related purpose was to place knowledge from three fields, law, psychology and divorce mediation, into a context which would focus the issues for those interested in divorce mediation in Alberta. A phenomenological method was used, in order to discover qualities indicated by lived experiences of divorce mediators who had been identified by their peers as being effective.

Two lawyers and two psychologists who also act as divorce mediators agreed to participate in this study. An average of two indepth interviews were conducted and transcribed. The data was broken into meaning units which were then paraphrased and categorized into descriptive themes at a first level of abstraction. A higher order clustering was carried out and used as a basis for the description of individual qualities. Analysis was verified with each co-researcher.

The themes that emerged were motivation, change in world-view, professional orientation, belief and value systems, counselor qualities and an enjoyment of intellectual and emotional problem solving. An unexplicated theme appeared which was labeled cognitive style. The general discussion includes mediation and relevant legal issues, future directions for mediation and lawyers, implications for divorce mediation education and suggested areas of future research.

Acknowledgement

I am indebted to my co-researchers Joe, Cecile, Bill and Pam, who shared their world and their time so generously.

Definition of Terms

Divorce Mediation:

A process by which a trained third party helps divorced or divorcing couples negotiate to resolution all issues in dispute between them. If done successfully, the final result takes the form of an agreement which speaks in some way to the five legal issues usually raised by divorce, namely the division of property, spousal support (alimony), child support child custody, and acess or child visitation. The mediation process itself should also help resolve still another issue which is often hidden but ultimately is as important as all other issues combined, namely, the emotional acceptance of the end of the marital relationship (Irving & Benjamin, 1987).

Conflict management and dispute resolution:

A distinction may be made between the ostensible dispute and the underlying conflict. Resolution of the dispute does not necessarily eliminate the conflict. Even if all levels of the dispute can not beresolved, the conflict can be reduced to a managable level. Both a complimentary and obtainable goals of mediation (Folberg & Milne, 1988).

Negotiation:

Negotiation is typically a sounding out and bartering process, often conducted through a representative. Negotiation is usually conducted in an adversarial and competitive manner and does not usually include a neutral

resource person assisting the parties reaching settlement (Folberg & Milne, 1988).

Negotiate:

Confer with another with a view to compromise (Concise Oxford Dictionary, 7th ed., 1982)

Arbitration:

A designated third person has responsibility for a making finding or providing a decision for the parties. the arbitration process is adjudicatory but typically less formal than the traditional court process (Folberg & Milne, 1988).

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Chapter 1

Introduction and Literature Review

This study is a phenomenological investigation into the shared qualities of divorce mediators who have different educational backgrounds. Chapter one provides an introduction to the subject from a personal perspective and an overview of the literature relevant to divorce mediation.

Introduction

Divorce surrounds us. The pattern of our friendships change as couples that we know divorce. Wedding congregations can be heard wondering aloud how long the union, so recently witnessed, will last. People talk casually about divorce at work and at play. Divorce is now an integral part of life. Our ready acceptance of divorce in today's world often masks the pain that is involved in the divorce process. It is pain that is reflected in contemporary music. Annette Ducharme's popular song "There's No Such Thing As A Pleasant Goodbye" carries a message that resonates conflict and pain.

The modern trend towards amicable separation is an attempt to relieve distress and encourage personal growth. Even when attempts are made to divorce in a civilized fashion, however, personal pain exists. I recall the divorce of friends about ten years ago. A conscious effort was made to lessen the pain for the children in accordance with the latest theories that had evolved around a concept called mediation. The children's mother was a new lawyer and their father a medical doctor. The couple agreed upon joint custody as well as joint parenting and

embarked upon a convoluted plan whereby the children would be raised in both homes with each parent providing approximately equal time. Houses were not far apart, lessons and schools arranged in the neighbourhood. I remember meeting the three children shortly after the divorce and throughout the intervening years. By all reports, the arrangement worked very well and happily for the children. All seemed serene. I was surprised to discover some years later that, during this period, the bitterness and emotional turmoil felt by each parent was not lessened, merely managed.

I had occasion to recall the trauma involved in the dissolution of this particular marriage during my own beginnings as a divorce mediator in a practicum setting. I was aware that Coogler (1978), a lawyer and a family therapist, embittered by his own divorce experience, began a movement to humanize divorce. Coogler's vision was to return control of the divorce process to the participants by a process called divorce mediation rather than have a settlement imposed upon a couple by a judge. He reasoned that a neutral third party, acting as a facilitator for the divorcing couple could ease and expedite negotiations to resolve the details needed to end the marriage.

None of the reading that I had done about the pain of divorce, nothing in my experience of pain and loss as a nurse, parent or student counselor, prepared me for the violent emotions unleashed in that small office on the day I began my practicum. Beguiled by the neutrality of divorce mediation language, lulled by the ideals of the mediation concept, and reassured by the thought of civilized divorce, I was unready to find myself inches from a man who was screaming at me with his hands twisting as if to wring the first available neck. I found myself thinking with my heart

pounding, "What kind of work was this? Who would willingly put themselves in this position day after day?"

In fact, my client's anger was understandable. He was under the impression that he had been forced to mediation by a judge or lawyer and he was convinced that he was disadvantaged because both mediators were female. This period was a very stressful time for him, and he could not contain the rage that he felt. When he had been allowed to vent his feelings and was able to listen, the session went very well and he entered negotiations willingly. Perhaps because the incident was so vivid, I continued to wonder about the qualities that one must possess to become an effective divorce mediator.

I began to question the role of the psychologist in mediation when I discovered that lawyers also mediated divorce agreements. How could a lawyer unschooled in interpersonal relations also mediate settlements? My question presumed that emotional damage would be inflicted upon either the correspondents of the divorce or their family by a person unskilled in therapy. Given the psycho-legal roots of divorce mediation, it is not surprising that there are two schools of thought about which kind of professional is a superior mediator. Since members from each profession mediate divorces of all kinds successfully, however, my question became more encompassing. If both kinds of professionals had been successfully mediating agreements to the apparent satisfaction of their clients, it would seem that the two shared some quality that was fundamental to the process.

In a study of effective and ineffective counselors, Soper (1963) found that effective counselors perceived their clients to be capable, worthy, dependable, and friendly, and perceived themselves as altruistic and non-dominating. Given the

emotional context found in the work of divorce mediators, I began to wonder if these were the traits I would find in all effective mediators regardless of background. In counselling, the self is considered to be the most effective instrument (George & Dustin, 1988). This means that counselors know themselves, and how they are perceived by clients. Their style of relating to clients evolves because it is the best fit for themselves. Perhaps all effective mediators used themselves as an instrument as counselors are taught to do. My theories soon began to outweigh my knowledge. I knew from my own experience that mediation could be taught. I wondered if there is a basic quality in common with all mediators that counseling skills would merely enhance? If there were some underlying characteristics, values, attitudes or traits that we shared, what would they be? The question for me emerged as "what are the shared qualities of an effective divorce mediator?"

Literature Review

Historical review

Mediation as a form of conflict resolution has been used from the time of the ancient Chinese and Greeks (Emery & Wyer, 1987). The Japanese preference for mediation has evolved from the traditional role assumed by the village elder to a system in which there are relatively few lawyers compared to Canada or the United States (Vroom, Fossett, & Wakefield 1981). Mediation is embedded in the Israeli legal system which is founded on religious tradition (Irving, 1980). It flourished in Africa as a "moot" court where issues were resolved co-operatively under the guidance of a village elder (Folberg & Taylor, 1984). In North America, the

concept of mediation was initially transplanted by the Quakers who used extended family members or kinship groups to resolve disputes (Folberg & Taylor, 1984). Similarly, immigrants of Chinese and Jewish descent established boards designed to peacefully resolve family and community conflict (Irving, 1980).

In North America, the most familiar form of mediation is that used in labour negotiations. Analogous to marital relationships, labor relationships are "polycentric or many sided . . . effects are long term and depend on future co-operation" (Folberg, 1983, p. 5). Folberg observes that the determination of a winner and loser in labor conflicts severely obstructs the future likelihood of co-operation. Often, divorcing people are parents so that future contact as parents is inevitable. In labor disputes, mediation is often the step before binding arbitration. In a divorce, the parallel to binding arbitration would be the judicial decision imposed upon a divorcing couple as a result of the adversarial system. In labour negotiations, both parties usually want a return to work which increases the probability of a mediated settlement. In divorce, unlike labor agreements, often one party is opposed to the divorce so that the likelihood of an imposed decision is higher than in labor disputes.

Divorce mediation has developed as an individual area of study and research only within the last ten to fifteen years, resulting in a somewhat narrow field of study with a burgeoning literature. It is a natural result of higher divorce rates in North America, brought about by changing social values and social upheaval from the civil rights movement, the consumer rights movement, the Vietnam war and student unrest of the 1960's and 1970's (Folberg,1983). Increasingly, North Americans looked to the courts to address imbalance and injustice, using cases as

constitutional precedents. As an example, Wade v Roe determined the rights of women to reproductive control in the United States. Reproductive control was a symbol of emancipation from paternalism per se in the 60's and 70's and laws passed at an earlier stage by men, that prohibited women from the right to control her body. Concurrently, attitudes towards divorce were becoming more liberal. The concept of no fault divorce fueled an already exploding divorce rate which had doubled from 2.5 per 1000 population in 1965 to 5.3 per thousand population in 1979 (Glick & Sun-Ling, 1986). In Canada in 1984, there were 65,000 divorces involving 60,000 dependent children (Statistics Canada, 1985).

No fault divorce was first introduced in California in 1970 (Irving,1980). Since that time, a similar law has been passed in every state except South Dakota in the United States and in every province in Canada (Freed & Foster, 1984). The increased case load on the courts created by demand for litigious solutions to social questions coincided with an increased case load in the divorce courts of both the United States and Canada (Emery & Wyer, 1987). Divorce mediation evolved from efforts to lessen strain on an overburdened court system, and to fashion a more humane method for making decisions about divorce in a liberalizing social environment where one half of new marriages end in divorce (Statistics Canada, 1988).

Divorce mediation is the process whereby two parties, with the aid of a third party, come to an agreement about the most important aspects of the divorce. The state of California demands that all divorcing couples with children attend one session of mediation before appearing in court. Many other states are following suit. The popularity of the concept of mediation as an alternative dispute resolution

device, has caused concern about the way mediation has been implemented and about many of the assumptions upon which it has been founded (Emery & Wyer, 1987). These assumptions are rooted in tradition.

Traditional Divorce

"In the past, the primary objectives of the law in family law matters was to preserve marriage, and therefore divorce was either prohibited or socially shunned" (Landau, Bartoletti, & Mesbur, 1987, p. 1). Prior to 1968, the only ground for divorce in Canada was adultery. Brown (1982) propounds that strict divorce law was the result of marriage becoming a sacrament during the ascendency of Christianity so that dissolution was possible only on grounds that were synonymous with sin. Brown (1982) comments that the "guilty party was the sinner deserving punishment and the innocent deserving sympathy and support and all she could get in settlement" (p. 4). The common grounds for claims of misconduct were adultery, physical cruelty, or desertion (Goldzband, 1982). The only approach to marital dissolution was to use the legal system in the traditional win or lose adversarial stance. The practice of finding one of the parties guilty unnecessarily complicates and deepens the pain of divorce. Irving (1980) denounces the "socially irrelevant and psychologically dangerous ecclesiastical tradition of finding fault in marital dissolution" (p. 27). He contends that the most unfortunate side effects of the adversarial role is on the children who provide an irresistible and effective means of mutual retaliation, when "each party is striving to be the winner." Parry, Broder, Schmitt, Saunders, and Hood (1986) "suggest that conflict escalates and individual needs of children are ignored when lawyers take

extreme positions on behalf of their clients in the interest of building up credits for the client and pointing to debits for the opponent." Landau, Bartoletti, and Mesbur (1987) reinforce the common sense notion previously noted, that an adversarial procedure leads to bitterness and hostility which "undermines the co-operation required for parenting" (p. 2). Custody, however was not always an issue in divorce.

Child Custody Law and Consequences

Research on the children of divorced parents provides one of the rationales for divorce mediation (Emery & Wyer, 1987). Historically, the father had exclusive rights to the child as a chattel. In ancient Rome the father could sell his children or condemn them to death (Roth, 1977). Until the 19th century the argument in favor of children as paternal property held because the husband was the decision maker and legal entity for the couple upon marriage, and was set aside only on cases of gross paternal misconduct or potential harm to the child (Wyer, Gaylord, & Grove, 1988). The common law paternal presumption was weakened by the "tender years" presumption. This was a doctrine that held young children should remain in the care of their mothers (Derdeyn, 1976), although adolescent boys were often awarded to their father (Weithorn, 1988). Gradually, in this century, the courts have come to endorse a policy that determines the "best interests of the child" determined by current social values (Maidment, 1983). Mnookin (1975) suggests that this standard poses four problems for judges:

1). litigation may be encouraged because the outcome of the custody hearing is unpredictable;

2). acrimony is increased because any derogatory evidence against one or the other parent may be deemed relevant by the presiding judge;

3). the door is opened for bias in the exercise of judicial discretion

4) appellate review is limited because of vague judicial guidelines.

For these reasons he feels the judiciary has incentive not only to allow, but to encourage private ordering of custody disputes through mediation or other means.

Goldstein, Freud, and Solnit (1973) present landmark work which proposed that custody of the child be awarded to a single "psychological parent" with whom the child would maintain a continuous day to day relationship and emotional bond. Furthermore, the custodial parent, in their view, should have the right to determine whether or not to allow access to the child. Rohman, Sales and Sales (1988), in work sponsored by the American Psychological Association, contend that if there are two psychological parents, custody should go to the primary care giver. Their criticisms note that the findings of the Goldstein, Freud and Solnit neglected to cite any social science data. They further criticized that psychological parent as a theoretical construct of little practical use to decision makers since research has shown that a judge can not depend (as Goldstein thinks), on the psychological parent to do what is best for the child. The most serious flaw, according to Rohman, Sales, and Sales, is that the Goldstein, Freud and Solnit underestimate the importance to children, of both parents in their lives to facilitate children's adjustment to the divorce. The concept of psychological parent created discussion that may still influence judicial decisions in spite of the collegial critical reception it received.

Alternately, Ricci (1980) presents a paradigm of joint custody and joint parenting in her seminal book, Mom's House, Dad's House. She offers techniques, based on research with children of divorced parents to show parents, how to co-operate even when they are not on friendly terms but want to remain actively involved parenting their children. The consequences for children of the adversarial system have been documented as short term adverse reactions for most, and there are reports of a smaller, but significant number of children who suffer long term adjustment difficulties (Emery, 1982; Emery, Hetherington, & Dilalla, 1985; Wallerstein & Kelly, 1980). There is mounting evidence to suggest that children profit from regular contact with both parents following a divorce (Heatherington,1982; Wallerstein & Kelly, 1980). Of the many conditions found to be detrimental for children, the most significant before, during and after the divorce is inter-parental conflict (Emery,1982). Children from high-conflict as opposed to low-conflict divorces have more psychological difficulties (Emery & Wyer, 1987). The rise in status of women and the increase in questions of discrimination against men have seen custody more evenly divided. In Alberta, however, the majority of custody decisions are still awarded to the mother.

In Canada, the first family mediation unit, called the Divorce Counselling and Family Affairs Unit, was established by the federal government in 1969. One of its main purposes was to fund and promote court-based conciliation services across Canada as a result of changes in the Divorce Act which directed lawyers to ensure that reconciliation services were available for clients and that every opportunity for reconciliation had been offered. In 1972, under the leadership of Judge Marjorie Bowker, the first conciliation court demonstration was established

in Edmonton, Alberta (Irving & Benjamin, 1987). Conciliation Services in Alberta expanded to mediate divorce settlements at about the same time that divorce mediation began to garner notice in the United States (Thompson, Cosman, Potter, & Kelly, 1989). Initially, the purpose of a conciliation unit was to provide marriage counseling or support for a divorcing family. Mediation arose from the divorce therapy process.

Differences Between Mediation and Therapy

The distinctions between mediation and psychotherapy rest upon the goals of each process. In the inaugural edition of Mediation Quarterly, Kelly argues that the "primary goal of family mediation is not psychological change, but negotiated settlements of the dispute" (1983, p 43). She defines mediation as a highly focused problem solving process, that provides a setting in which emotional catharsis can occur in relation to the mediation tasks that are considered and completed, not as a result of their direct exploration. Irving & Benjamin's (1987) definition of mediation includes as an attendant goal, the "emotional acceptance of the divorce" by the disputants as an ideal of mediation. "Mediation is not treatment" (Milne, 1985, p. 7) even though the two do share some features of process. Mediation may be therapeutic, but that is not its primary function (Brown, 1982).

When therapy is extended to treatment of a couple or family, the goal continues to be the emotional well-being of the participants (Milne, 1985). Improved communications, autonomy, and individualism and empathy are goals typically espoused by family therapists (Olson, 1975). Marriage and family counseling is committed to marriage preservation rather than its dissolution.

Divorce counseling is a new specialty within the existing field of marriage and family therapy. When a couple arrives at a decision to divorce, either individually or as sometimes happens as a result of self-knowledge achieved in therapy, the goals change. The goal of divorce counseling is to: help an individual or a couple disengage from the marital relationship, to adjust to the stress of separation and to cope with emotions. Divorce therapy can also help individuals understand what went wrong with their marriage, to help bridge the transition to single life, to prepare for the future and to be more aware of the effect of the divorce on children and the need of children for continuing relationships with both parents (Brown, 1982, p 30).

It is estimated that about one third of divorcing spouses seek aid from a mental health professional and most report that it was useful in helping them cope with a highly stressful period in their lives (Beal, 1980). In spite of these favorable findings, Kressel and Deutsch (1977) contend that the role of therapist in divorce is the most under-represented area of clinical research. The pivotal role of the therapist is similar to the role of a mediator in any of the three models of divorce mediation.

Mediation Models

A major component of mediation is settling the issues of property, custody, access and visitation rights. How these matters are settled depends on the theoretical model of mediation used. The three major models of mediation reflect the background, experience and assumptions of the respective theorist. Structured mediation, the attorney mediator model, was contributed by Coogler, the

acknowledged founder of the mediation movement. The labor mediation model was outlined by Haynes (1981) who was a labor negotiator and social worker. The therapeutic mediation model was developed from a family systems perspective by Irving (1980).

In their theoretical bases, the models are distinct. Boundaries between the models have become blurred in practice as mediators tend to adopt aspects from each model in line with their own training and value orientation, the characteristics of the couple and the conflict being mediated. The models share some common features in that they are goal-directed, problem solving, helping interventions (Brown 1985), and all are directed at "resolving disputes with the aid of an impartial third person" (Lemmon, 1985, p. 6).

Coogler (1978), embittered by his own personally devastating experience of divorce, established the practice of mediation known as the attorney mediator model, structured by formal rules and contracts. The principle of fairness overrides all others in structured mediation, and the process is governed by forty five rules. One of Coogler's innovative rules is that visitation agreements must be established for the noncustodial parent before custody is discussed. Similarly, the rules require that in cases involving custody dispute, all finances are resolved before custody issues are considered. The purpose is to effectively prevent using the children as a tactic to secure financial matters. Milne (1983) suggests that the structured model is usually used by attorneys whose primary issues are property rather than custody. In Coogler's model, the mediator usually has a mental health background. The final results are checked by the program's advisory attorney.

Haynes (1981) labor mediation model centers theory on the emotional aspects of divorce. He focuses on four developmental stages: deliberation, litigation, transition, and redirection. Each stage reflects emotional and cognitive experiences and needs of the individual spouse. The model allows the professional helper to fluctuate between the two processes of mediation and therapy according to the client's stage of divorce while keeping the two operations separate and distinct. Haynes relies on several techniques borrowed from labour resolution such as individual caucus and shuttle diplomacy to resolve conflict when emotions overwhelm decision making. Haynes also believes that the therapist has an ethical obligation to help uncouple a relationship. Brown (1985) observes that while structured mediation relies on following a set of rules, this model is reliant on the process of negotiation itself, through successive bargaining, to produce a fair settlement.

Irving (1980) believes that "divorce mediation is a therapeutic process through which the counselor provides an atmosphere in which the marital pair is free to bring out and examine openly their pain and their disappointments" (p 23). The therapeutic model is distinguished from other models of mediation in that it focuses on the education of parents about the needs of their children in the long term (Brown, 1985; Irving, 1980). Saposnek (1983, p. 17), a proponent of the therapeutic model, believes the "parents mutual problem is how to optimize the time their children share with each of them." In 1986, Mediation Quarterly, devoted an issue to several therapies and their use in divorce mediation. The therapeutic model of mediation encompasses structural family therapy (Brown & Samis), social

learning theory (Stuart & Jacobson), Ericksonian approaches (Sargent & Moss), and Milanese systems theory (Gadlin & Oulette).

Success in the therapeutic model enlarges the usual definition of a signed marital agreement to include the couple's emotional acceptance of the divorce. Considering the emphasis the therapeutic model places on children, it is understandable that there is concern for the quality of continuing communication between the parents. If the divorce is not accepted by the family, unresolved issues will continue to warp the quality of communication, creating tension and conflict. Lemmon (1985) reminds us that a severed relationship does not end the interaction between parents. Wallerstein and Kelly (1980) led a field of research which demonstrated that the most critical detriment to children's adjustment following divorce is the degree of continuing conflict in the parental dyad. Regardless of the model, the role of the divorce mediator is diverse.

Role of the Divorce Mediator

The role of the mediator in all three models is to provide a neutral third party perspective and to facilitate an agreement between the divorcing spouses (Brown, 1985). According to Folberg and Milne (1988), the role of the mediator is that of a facilitator of communications, a guide toward the definition of issues, and a settlement agent who works towards the settlement of issues by assisting the disputants in their own negotiations. Neutrality, however, does not imply inactivity. The mediator exercises a wide array of interdisciplinary skills, involving communication, observing analyzing, questioning, drafting, problem, defining and problem solving. The mediator's behavior must be impartial. "The relationship

between the parties and the mediator, nurtured by the mediator's neutrality enhances the effectiveness of the mediation process" (Pirie, 1985, p 382).

Saposnek (1983) is concerned that mediators recognize "the uniqueness of the content of child custody mediation." Wallerstein and Kelly (1980) point out that child custody mediation is a very special type of mediation and emphasize that the mediator must be an advocate for the children. Wallerstein and Kelly's (1980) conclusions are based on their own experience which finds that most children have an adverse reaction to a parental divorce, and that a smaller but significant proportion suffer long term adjustment difficulties. Bienfield (1983) believes the mediator has three functions when children are involved; those of counselor, educator and mediator. Helm and Scott (1986) believe that advocacy (on behalf of children) can be a part of negotiation without threatening neutrality, which is a prime objective of the mediator. Neutrality is tempered by the values the mediator brings to the session. As well, divorce mediation is significantly different from other kinds of mediation because there often "exists an interested and often powerless third-party, the child whose interests must be represented and upheld" (Hopkins, 1982, p. 63).

Epstein, a lawyer and author of the forward in Irving & Benjamin (1987, p. vii), understands a competent mediator to be "a person who can recognize the readiness of each party to engage in the mediation process and who makes sure that he or she controls the process so that they both bargain with some sense of equality." A good mediator, to Epstein, is one who can help ease the trauma of the separation, and who gets the parties to reach a reasonable resolution for the sake of their children and some harmony in their own lives. Irving and Benjamin (1987)

conclude that, while technical skills are a function of experience and important to use well, it is "the relationship between the mediator and client couple which is the key to eventual success" (p. 93).

Saposnek (1983, p. 32) characterizes an effective mediator's style as active, assertive, goal oriented and businesslike. He maintains that a "major quality of an effective mediator is a true enjoyment of skilled, controlled problem solving" and he places a strong emphasis on objectivity. Saposnek (1983) encourages the use of the "sensitive scientific approach" in which the mediator views each case as a mini experiment, collecting data from which to form hypotheses which are then tested in mediation (p. 36). Volkema (1988) suggests that protecting the dignity of the disputants by helping the parties to negotiate acceptable public images with each other, increases the mediators effectiveness. An effective mediator is often a lawyer. Lawyers as mediators have stimulated serious debate within the legal profession.

Attorney as Mediator

A growing dispute among lawyers is whether they should act as mediators. In his seminal paper, Pirie (1985) argues that the ethics and responsibilities of the lawyer outlined by the Canadian and American Bar Associations conflict with the concept of mediation. He thinks that American Chief Justice Berger's re-iteration of "lawyers historical and traditional obligation to respond to the age old call to be healers of human conflict", should be heeded by the legal profession. The intent of alternative dispute resolution has placed lawyers in conflict with the rules and regulations by which they are governed, particularly those which demand that they

act and defend the interests of their clients to the best of their ability in the traditional adversarial role.

Pirie's stated assumption is that a mediator must have knowledge of the law and must therefore be a lawyer. The Honorable L. Cooke (1983) implicitly agrees with Pirie. Cooke proposes that an effective mediator's first job is to obtain the client's trust and confidence. In his view, the mediator is to encourage communication, assist in the areas of disagreement and agreement, and then work to bring the parties to a resolution that has been defined by the parties themselves. Cooke (1983) quotes the conclusion from the Vera Study at the Brooklyn Dispute Resolution Center which says that to make the agreement work, the parties become psychologically bound to respect the terms of their resolution. Kraut (1983) contends that while attorneys are trained to think as adversaries, with few exceptions, domestic relations attorneys will attempt to settle their cases, whereas attorneys with less experience in the field usually end up in litigation. The "psychological well-being of the client, as well as the cost in time and money are often disregarded in domestic relations cases" (Kraut, 1983, p. 1379). The presence of a lawyer for each party restricts or inhibits communications because all communication regarding settlement is through each person's lawyer. Riskin (1982) also notes that one of the principle functions of mediators is managing the communications process, and in this function they must understand interpersonal relations and negotiations. He applauds the training sessions that have been established for lawyers to learn interpersonal skills in order to work as divorce mediators.

Despite their assertion that an effective mediator does not have to have a mental health background, Irving and Benjamin (1987) raise a concern that the acquisition of listening skills by lawyers may not be enough. They feel that lawyers must also understand the theoretical model of family process which provides a mental map to organize vast amounts of data and to circumvent the danger of using a mental heuristic or practical interpretation which may be wrong. In Irving and Benjamin's view, the danger inherent to legal practitioners in mediation is that they see it as an "extension of what they do in their practice, namely help people in trouble solve problems" (p. 64). They caution that in mediation, the facts of a case may not always speak for themselves. Interdisciplinary concerns about divorce mediators have recently created considerable interest.

Interdisciplinary Concerns

Koopman, a prolific writer about the educational standards necessary to develop excellence in mediators (1985), identifies four areas of suspicion that must be allayed by professionals working with different backgrounds in the same field. The areas are: 1) professional isolation by lack of knowledge about the other's training and expertise and suspicions about the efficacy of the other's practice, 2) maintenance of a professional "mystique", 3) an inadequate conceptualization of legal, economic, emotional, familial, social, and religious factors of the divorce experience, and 4) an inadequate background in conflict resolution theory and mediator specific conflict resolution skills. An article by the honorable Dorothy Nelson (1984), is but one example of the concern in the legal profession about the

encroachment of mental health professionals into the legal arena. She agrees that mediation is especially recommended for family disputes, because as "family mediators have recognized, divorcing spouses should be given broad powers to determine their own post-dissolution rights and responsibilities." She feels that it is "essential that the mediator possess skills in the area of human dynamics, interpersonal relationships and conflict management. Additionally the mediator should possess the requisite legal knowledge in areas such as tax and finance".(p. 475).

Although many writers advocate an interdisciplinary approach (Coogler, 1978; Haynes, 1981; Irving, 1980) or alternately, a new field that blends the disciplines into a formally educated mediator to serve the disparate fields that now employ mediators such as divorce, community, labor, and business (Koopman, 1985), little has been written about similarities found in either the professions or the professionals. Steinberg (1985) observes that the best mediator is neither lawyer or therapist. It is a blending of both. He also suggests a that a team approach is better than the mediator when this blend is not available. He delineates in a delightful manner seventeen points of similarity between lawyers and psychologists involved in mediation; fifteen are useful to our discussion:

1). We are each witch doctors.speaking in jargon that inhibits the community comprehension, that isolates us, but which we and our clients believe have curative properties.

2). We generally write only for ourselves, conference with ourselves, share insights with ourselves.

3) We each have the power to institutionalize, to incarcerate, depriving citizens of their autonomy.

4) We are the heros and the villains of trashy novels and mediocre movies, rarely fine literature.

5) Each of us is dependent on the goodwill of the community, yet our professions are poorly regarded. The public deprecates us collectively while respecting us individually.

6) We each deal with clients who see us reluctantly, fearfully, prayerfully. When we see our clients individually and thus make it more difficult to see the whole picture, we increase the probability of divorce and the likelihood that the divorce will be an adversarial one.

7) We are each surrounded by an untrained public who is convinced it understands our field.

8) We often relish power, seek control, avoid interdisciplinary cooperation and revere confidentiality, using it as a sword as well as a shield.

9) We each stereotype the other as a homogeneous group.

10) We both serve clients laboriously, personally, and slowly, assuring a shortage of our services in a community in need.

11) We are particularly difficult clients for the other to deal with.

12) Our services are each too expensive for the average citizen.

13) Each profession sees divorce as an area of general practice. Many of our colleagues, therapists and lawyers feel free to handle the dissolution of marriages without special training skills or experience,

thus providing general assistance to clients in dire need of specialized competence.

14) We are each only as useful as our clients allow us to be.

15) We each require an understanding of the other profession in order to function properly, and both professions are misinformed and mistrustful of the other (1985, p. 10).

Folberg and Milne (1988) present a documented estimate of the professional background of divorce mediators in the United States. In the private sector, 78% are mental health professionals and 15.4 % are lawyers. According to the Divorce Mediation Project nearly 80 % of all mediators hold a graduate degree. In Canada, of the mental health mediators, 57% held a graduate degree and 25% claimed a bachelor level degree (Irving & Benjamin, 1987). At Conciliation Services in Alberta,family workers holding bachelor degrees are court based workers who help people through court room procedures. They are authorized to refer suitable cases to the agency divorce mediators who hold graduate degrees in sociology or psychology. The education level of divorce mediators has assumed importance because of the vacuum in the discipline regarding education. The level of education, not the content, is complementary between lawyers and psychologists, who are restricted from practice without a Masters degree and American Psychological Association certification.

Milne and Folberg (1988, p. 6) observe that mediators from a clinical background tend to define mediation by emphasizing the resolution of emotional issues, whereas mediators from a legal background tend to define mediation as a contractual and non-therapeutic process. Regulations from the American Bar

Association for attorneys providing divorce mediation do not mention psychological issues of divorce. Emphasis on the contractual level is illustrated by the following example which reads: "A lawyer helps family members resolve their disputes in an informative and consensual manner.based on sufficient factual data; and that each.participant understands the information on which decisions are reached" (American Bar Association, 1984, p 363).

Mediation Skills and Mediator Characteristics

Mediation skills are thought to be an art rather than a science. They are often thought to be too elusive to conceptualize and measure. The role of the mediator is critical given that the negotiators are always inexperienced (Vanderkooi & Pearson, 1983). Zaidel (1988) has also pointed to the need to find a common denominator among attorney mediators, mental health mediators and clergy in the field. The need to find a common denominator is cited as important in order to better understand how effective divorce mediators work, and to find ways of identifying potentially skilled mediators. Mediators who are skilled are also assumed to be ethical. Zaidel maintains that the scope of mediators work should be limited by the nature of their training.

Skilled mediators promote a problem solving negotiation process while remaining sensitive to the interacting power relationships in the dispute (Walker, 1988), and accountable to the profession. The most prominent skills discussed are usually psychological. Counseling skills are used to direct couples back to the issues at hand, to evaluate the couple's ability to negotiate, to determine the need for outside counseling, to establish when a couple needs to vent feelings and when it is

time to move on, to facilitate the couple's future adjustment, and to help the couple reach a mutually satisfactory settlement (Blades, 1984).

Research Studies

Folberg and Milne (1988) reason that successful mediation outcomes are the "result of the dispute and disputant traits as well as *mediator characteristics* and suggest that the "underlying assumption is that mediator behaviors have a significant impact on the success of the session" (p. 434). In a study to predict outcome at the Denver Mediation research project, Slaikeu, Culler, Pearson, and Thoennes (1985) found that the users perception of the mediators ability to 1) facilitate communication, and 2) provide users with a better understanding of their feelings as well as those of their children and ex-spouse predicted both settlement and willingness to recommend the process to others.

Specific mediator interventions and processes in communication are used. Successful mediators will use intense structuring, reframing and expanding tactics more often than unsuccessful mediators in response to a disputant's attacking or bolstering utterance, and will use less intense tactics in response to a disputant's integrating utterance (Donahue, Allen, & Burrell, 1985). Hochberg and Kressel (1983) conclude that couples who were apprehensive about communicating during the divorce and whose attorneys did not adopt a counseling orientation, were subsequently more dissatisfied with the divorce experience and less co-operative with one another. A coding system has been developed by Slaikeu, Pearson, Luckett, and Meyers (1985) in order to evaluate specific mediator behaviors in terms of mediation outcomes. The system analyzes content and tone, and was

developed by examining several hundred hours of audiotape. Of particular interest is identification of "mediator behaviors [which] are associated with spouse co-operative talk, solution talk and disputants behaviors in general" (Slaikeu et al, 1985, p. 50).

Pearson and Thoennes (1984), leading researchers at the Denver project, comment that to date the most deficient research areas include analysis of the characteristics of effective and ineffective mediators, and the personality profiles of clients who respond positively to mediation and those who do not. They found that therapeutic mediators change their behaviors over time, with non-directive, therapeutic mediators developing into more task oriented and directive styles and lawyers preferring a more structured approach which implies some consistency of mediator behavior. Their analysis showed that the most effective mediator approach is a structured one with considerable mediator input, but that the two most successful mediators in the study used different models. These findings suggest that success depended upon the mediator rather than on the theoretical model used. Kressel, Lopez-Morillas, Weinglass, & Deutsch (1978), through in-depth interviews, found many similarities among the roles of therapist, clergy, and attorneys when working with divorcing individuals. The three groups used many similar strategies, including reassurance of a favorable outcome, emotional support, empathic listening, appropriate use of humor, and self-disclosure. A study of effective mediator characteristics leads to an examination of the qualities most often found in psychologists and lawyers.

Characteristics of Effective Counselors

George and Dustin (1988) comment that after a number of years and a vast amount of research, theorists are uncertain as to the exact qualities that distinguish an effective counselor from an ineffective one. Shertzer and Stone (1981) reflect that "measurement of these qualities is made difficult at the outset by semantic obstacles and vagueness of concepts" (p.132). Based on Rogers' audiotape research (1961), the American Association for Counselor Education and Supervision in 1964 indicated that a counselor should have six basic qualities: 1) belief in each individual, 2) commitment to individual human values, 3) alertness to the world, 4) open mindedness, 5) understanding of self, and 6) professional commitment.

Coombs and Soper (1963) concluded that effective counselors, those who attained the goals of the therapy in facilitating positive change, perceived their clients to be capable, dependable, and worthy, and perceived themselves to be altruistic and nondominating. These qualities became more important when the researchers concluded in further studies (Coombs, Soper, Gooding-Benton, Dickman, & Usher, 1969) that the personal characteristics of the counselor and the basic beliefs that counselors had concerning people were major factors in facilitating positive growth. They found that effective counselors perceived other people as able, rather than unable, to solve their own problems and to manage their own lives. Effective counselors also perceived other people as dependable, friendly and worthy. They were also more likely to identify with people rather than things, to see people as having an adequate capacity to cope with problems, and to be more self-revealing than self-concealing.

Assuming that an effective counselor is an effective person, it is useful to note Rogers' (1962) definition of a fully functioning person. He proposed that a fully functioning person a) has an increasing openness to experience, as opposed to defensive reactions to experiences perceived as being incongruent with his or her self image, and b) is continually moving toward being a process, constantly in change, but fully living each moment in the "here and now", and c) has an increasing trust in his own organism. Using the research literature on counselor qualities and human qualities as the foundations for a composite model of human, and therefore, counselor effectiveness, George and Christiani (1986, p. 15) find six personal characteristics of effective counselors:

1). open to and accepting of their own experience.

2). aware of their own values and beliefs.

3). able to develop warm and deep relationships with others.

4). able to allow themselves to be seen as they actually are.

5). accept personal responsibility for their own behavior.

6). have developed a realistic level of aspiration.

Farnon (1954) concluded that counselor characteristics were fundamentally those that society traditionally attributed to women (hence devalued as weaknesses), precipitating further investigation by McClain (1968). Further analysis of the studies prompted Carkhuff and Berenson (1969) to point out that research also finds counselors active, assertive and able to confront and interpret immediate interactions when they occur. If the stereotype proposed by Farnon exists, it seems likely that the legal profession may see psychologists as soft or feminine, hence weak, which would increase any resistance to comparison. Research into the

question of attorney characteristics is considered to be helpful, in that some similarities, as well as differences, emerge.

Attorney Characteristics

Research by Halem (1982) into the attorney role in divorce, found that 70% of women and 90% of the men sampled, expressed disappointment and anger over the way their cases were handled by their attorneys. Much of the client dissatisfaction focused on the attorneys' lack of patience, availability, sensitivity, and therapeutic approach. Price and McKenry (1988) suggest that most attorneys intensely dislike having to deal with the painful emotions of divorcing individuals; however, two-thirds of the attorneys interviewed in a study by Herrman, McKenrey, & Webber (1979) admitted playing the counselor role in most, if not all, of their divorce cases. The attorneys surveyed suggested that some formal training in counseling be given in law schools, that they be given an increased knowledge of referral services, and sensitivity to the trauma of divorce be increased. O'Gorman (1963) conceptualized the attorney role in divorce as fulfilling two basic ideal types: the advocate and the counselor. The advocate seeks maximum benefit for the client within the limits of the law, whereas the counselor tries to ascertain the nature of the marital difficulty. Kressel et al. (1978) developed six typologies from the attorneys interviewed:

1) The undertaker, characterized by general cynicism, assumes clients are in a state of emotional derangement and law is viewed as a thankless messy business.

2) The mechanic is pragmatic, technically oriented and assumes clients are capable of knowing what they want.

3) The mediator is oriented toward negotiated compromise and rational problem solving with emphasis on cooperation between spouses.

4) The social worker is concerned for the client's post divorce adjustment and overall social welfare.

5) The therapist assumes legal aspects of the divorce can be handled better if the emotional aspects are handled by a lawyer.

6) The moral agent rejects neutrality and assumes the lawyer should not hesitate to use his or her sense of right and wrong. ...(p.123-127).

Psychologist/ lawyer Robert Redmount (1961) has described three types of personalities among lawyers arising from his studies: 1) zealous, aggressive; 2) coping competitive; and 3) empathic conciliatory. Based on this research, Riskin (1982) suggests that many lawyers have "empathic conciliatory personalities that may incline them to work often in a mediative way" (p. 45). In his study of German lawyers, Weyrauch (1964) theorized that legal education and legal processes attract and provide an outlet for a specific kind of personality. A profile of lawyers emerged with a collective style of thinking, speaking, and acting. They tend to be defensive toward such disciplines as sociology and psychology. They frequently adhered to a philosophy of individualism. Lawyers emphasize skills and professional responsibilities. Prestige and status are very important to them. They think in terms of respect and power hierarchies. When attending to these results it is important to remember that it is a cross-cultural study. It is difficult to divine the

portion of these characteristics that are based on German culture, and those that are inherent in lawyers.

There is only sparse research on the qualities and training of effective mediators working in any substantive setting. In light of this fact there has been a reluctance to impose requirements or even endorse guidelines in mediation training and certification. It would seem preferable that, as Koopman (1985) suggests, lawyer mediators have a regulated psychological background, and that psychologists and other mental health professionals have suitable formal legal training, or that members of each discipline mediate as a team. Until that time it is useful to understand the qualities shared by effective mediators from both disciplines.

Conclusion

As a method of dispute resolution, mediation has held an honored tradition in several societies. Divorce mediation appeared in North America in response to changing social values about the role of women, individual rights, and a growing demand on the court system precipitated by liberalized attitudes towards divorce. Divorce mediation is the process by which two parties come to agreement about the most important aspects of the divorce with the aid of an impartial third party. Divorce mediation evolved from an effort to make the process of divorce more humane than the traditional adversarial procedures. The goal of divorce mediation is always a signed agreement suitable to each party. Therapeutic divorce mediation considers emotional acceptance of the divorce an ancillary goal.

Child custody features in the majority of divorce settlements. Historical doctrine has changed from viewing children as property to the present day emphasis on the best interests of the child. Divorce mediation is generally viewed as the least traumatic divorce procedure flowing from the findings that continued parental conflict does the most damage to children of all ages, who need the love and attention of both parents.

Divorce mediation is not therapy. It is a highly focused problem-solving process that can provide a setting for emotional catharsis but only in relation to the mediation tasks. All models of mediation share the problem solving, goal directed approach using an impartial third party to facilitate communication and the resolution of issues.

The professional backgrounds of the divorce mediators, including the values and biases brought to their work, shape the mediation process. It is generally agreed that counseling skills enable communication and are pre-requisite. Divorce mediators must have some knowledge of the law, but when they are directly involved in the mediation, mediators must refrain at all times from giving legal advice which may sabotage mediator neutrality. The exception to mediator neutrality is in the case of custody and access disputes: In those cases mediators use their knowledge of child development and the research into effects of divorce on children to guide agreements, which are based on the principle of the best interest of the child.

Lawyers who act as mediators face an ethical dilemma. On one hand they are bound to act in the best interest of their client; on the other they are exhorted to be healers of human conflict. In spite of the dichotomy, many lawyers embrace

mediation. Interdisciplinary concerns about the effectiveness of lawyers insufficiently trained in counseling skills are balanced by concern about mental heath professionals insufficiently trained in the law. Most researchers find that lawyers emphasize the contractual non-therapeutic aspect while mental health professionals emphasize emotional issues. A major study concludes that communication skills and provision of understanding for and by the clients and their families' feelings, best predicted settlement.

Mediators from both backgrounds are effective mediators. Effective counselors believe in individuals, have commitment to individual human values, an alertness to the world, an open-mindedness, and an understanding of self and professional commitment. Research into the personality of lawyers identifies several types that can be placed into two ideal types, the advocate and the counselor. It is speculated that the lawyers most likely to mediate divorce are those who could be categorized as counselor types. There is concern that lawyers might enter mediation to fill a void perceived by the legal profession and to build a personal reputation. The purpose of this study is to find qualities shared by effective mediators, so that both communities might better understand how to best serve the community.

Chapter 2:

Methodological Considerations

This chapter discusses the underlying philosophical differences between natural science and human science. A more detailed description of phenomenological research considerations is provided.

Introduction to Philosophical Foundations

The choice of method is an important consideration in psychological research. It is not so much a consideration of which method is best, but rather determining the best method depends upon the nature of the problem to be solved (Frender & Osborne, 1988). Research in psychology has largely focused on phenomena which are observable, measurable, and which may be duplicated (Colaizzi, 1978). This method of research, referred to as natural science, is concerned with formulating hypotheses in order to predict cause-effect relationships (Valle & King, 1978).

The term human science (Giorgi, 1970) evolved from the philosophy of humanism. It is a philosophical orientation, a way of looking at the world. Human science includes phenomenology as a specific method of research. Phenomenology focuses not only on observable behavior, but also on the inner experience of thoughts, emotions and sensations (Valle & King, 1978). Phenomenology does not attempt to explain the occurrence of the phenomena but rather attempts to explain its very nature (Colaizzi, 1978).

I chose to explore the shared qualities of effective divorce mediators by investigating the inner and outer world of each person in a phenomenological study. Since phenomenology is a relatively new research approach in psychology (Colaizzi, 1978), it is appropriate to examine each method, understand the goals and presuppositions of each and place phenomenology in the broader context of scientific methodology. This chapter places the philosophical basis of natural science and human science in an historical context and examines the differences in each methodology.

History

The natural scientific and the human sciences approaches are based on two different philosophies. Natural Science is based on the philosophy of DesCartes (1596-1650) whose aim, in reaction to ecclesiastical arguments like those of "how many angels stand on the head of a pin?", was to separate spiritual from scientific knowledge. He viewed the mind and body as "two distinct and independently separate entities" (Sahakian, 1968, p. 137-138). DesCartes believed only that which was directly observable was worthy of an exact science. Human experience was considered to be subjective because it was not "graspable by sensory perception" (de Mare, 1972, p. 79). The distinction between the unobservable mind and the accessible body became known as the Cartesian split (Valle & King, 1978). Bacon (1561-1621), Locke (1632-1704) and the British empiricists formalized the belief that knowledge must be based on observable things and events. Locke extended this logic to consider the mind. He reasoned that, if all knowledge comes from sensory experience from the world, then a gap exists

between consciousness and the world outside oneself. Sensory meaning from the outside world imprints upon a blank mind to build simple ideas from which more complex thoughts are formed unidirectionally. In this way, it was "impossible to invent or frame one simple idea in the mind" (Rychlak, 1981, p.12). Accordingly, "the person is exclusively a product of the the environment" (Osborne,1985). The subject-object split, implicit in seeing the world as objectified from a subjective self, became the foundation for a method of investigation defined by measurement, quantification and experimentation. Colaizzi (1978), contends that the success of William Wundt's laboratory experiments in 1879 placed psychology firmly in the natural scientific arena, necessarily at the expense of understanding inner experience.

Human Science, exemplified by existential phenomenology, seeks to understand the human condition by examining concrete, lived experience (Valle & King, 1978). Its roots can be traced to Kant who rejected Locke's theories. Kant believed that sense impressions would be unintelligible without the mind's ability to interpret. He concluded that some pre-existing structure of the mind categorized and made sense of the world (Packer, 1985). Kant discussed the world in terms of the noumenon, as the object of pure nonsensual intuition (New Webster's Dictionary, 1981), and phenomenon, an object or occurrence presented for our observation either in the external world or in the human mind, in contrast to that object or occurrence as it is in itself (New Webster's Dictionary, 1981). Kant's emphasis on the active nature of the mind, the importance of the experiencing person, and the difficulties presented by an overreliance on the sensory system for

knowledge, provided the foundation for the phenomenological tradition in human science methodology.

Natural Science Methodology

The history of Natural Science in psychology is based on work from many fields of study. Mathematics, physics, biology, and chemistry, as examples of the scientific tradition, relied on the assumption that there is an ultimate reality which is often material in nature and can be observed by scientific researchers as separate and distinct from themselves (Bogden & Bilken, 1982). The search for truth becomes a search for something that already exists and which can be broken into parts for analysis so that the pre-existing whole can be understood (Colaizzi, 1978). The "scientific" tradition of psychology continued established positivistic methods into the investigation of questions for which the material resolution would be impossible (Colaizzi, 1978). Quantification became an important means to maintain objectivity. Ideas are transcribed into hypotheses by the researcher and assigned representations in the form of numbers or letters. Reactions by the subjects are often measured in physical movements which are then counted to establish a causal relationship. In Natural Science, "the phrase 'scientific research' means a systematic, controlled, empirical and critical investigation of hypothetical propositions about presumed relationships among variables, where a variable is an idea that takes on values that can be quantified" (Smith & Glass, 1987).

The Natural Science system of investigation has worked well for a number of kinds of psychological investigations. Perception, and behavior modification are two areas of psychology where the methods of Natural Science are especially

suited. Experience in these two areas is external and the questions asked can be answered by examining external forces. However, McConville (1979) maintains that studies of perception have missed exploring the important aspect of "understand[ing] the origins and evolution of perceptual meaning" (p. 95).

A recent movement away from hypothesis testing oriented research towards discovery oriented research has been noted by a number of authors (Kimble, 1984). Using qualitative and quantitive measures together provides a depth of perception or binocular vision that neither one can provide alone (Stainback & Stainback,1984). Phenomenological inquiry can also be used as an initial knowledge base that can be enlarged by Natural Science. For example, by exploring the shared qualities of divorce mediators, a researcher could develop a meaningful questionnaire for clients receiving mediation and develop a screening process for prospective employes.

Phenomenological Methodology

Phenomenological research stems from the work of several philosophers. One of these is the philosophical tradition of existentialism as it "seeks to understand the human condition as it manifests itself in our concrete lived situations" (Valle & King, 1978, p. 6). Existential-phenomenological thought contends that existence is actually being-in the-world (Valle & King, 1978). That is, we have no existence apart from the world and the world has no existence apart from us. Each individual and the world are said to co-constitute one another (Valle & King, 1978, p.7). The phenomenological researcher considers the idea that people cannot be removed from their world to be fundamental since it is through

that world that the meaning of a person's existence emerges (Becker, 1986). Similarly, existence gives meaning to people's worlds.

The method of phenomenology is attributed to Edmund Husserl (1859-1938). Husserl identified the Lebenswelt or the life-world as the way of being-in-the-world. It is "the everyday world as it is lived by all of us prior to explanations and theoretical interpretations of any kind " (Giorgi, 1975, p. 99). "It is not the external entity separate from or independent of him" (Valle & King, 1978, p. 8). To contact the immediate lived experience of a phenomenon, the researcher must enter the life-world. The method of contacting this consciousness is phenomenology. It relies on careful detailed description to reveal the phenomenon as it is experienced. It is a disciplined search for structure, form and truth about the phenomenon under investigation. The procedure of contacting participants' lived experience is commonly accomplished by asking them to communicate their experience verbally or in writing (Colaizzi, 1978). The participant in phenomenological research is referred to as a co-researcher. The term implies an equality with the researcher and an interest similar to that of the researcher in discovering the structures of experience.

Structure (essence or form) is a phenomenon that is revealed in several different ways, but is seen as having the same essential meaning when it is perceived over time in many different situations (Valle & King, 1978, p. 15). An example of structure would be that of a melody that is transposed in its whole to another part of the scale. The melody would remain the same using different notes. Structure in phenomenological research is made present to us as meaning. Reality is consensual, and not viewed as being apart from the world. People are contextual

in that they can not separate themselves from their world, and are active in the way they interact with their world. "Through description, the pre-reflective life-world is brought to the level of reflective awareness where it manifests itself as meaning" (Valle & King, 1978, p. 17). Phenomenological reduction allows us to examine the life-world and see its structural reality. Phenomenology attempts to understand the whole person in relation to experience in the biological world, the social world, and as affected by the past while living toward the future (Valle & King, 1978). In this way phenomenology seems particularly suited to a study of shared qualities of divorce mediators in that while the givens present in the world of each co-researcher are different, the melody, called structure, will emerge through their experience.

"Hermeneutics involves an attempt to describe and study meaningful human phenomena in a careful and detailed manner as free as possible from prior theoretical assumptions and based instead on practical understanding" (Packer, 1985). To ensure freedom from a priori understandings, researchers examine their personal values and biases so that they may be more open to the phenomenon as it is actually lived. This reductive process was called bracketing by Colaizzi (1978). The purpose of bracketing is to avoid attending to only that which fits with the researcher's understanding of the experience under investigation. Bracketing provides a map which allows others to understand the perspective of the researcher, thus serving to enhance validity.

Validity

Validity in natural science occurs when an experiment measures what it is supposed to measure. This somewhat obscure definition implies that it can be

difficult to decide and to explain what is being measured, and that it is being measured correctly. To this end natural science uses two prerequisites to demonstrate validity. Internal validity is found if the variable controlled by the experimenter in some way changes the dependent variable. External validity occurs when the effects found in the experiment can be generalized to a population (Smith & Glass, 1987).

Emphasis on the spoken or written word in human science research requires rigorous interpretation so that the truth emerges from the data. Salner (1986), insists that "it makes more sense to talk in terms of *defensible knowledge claims* than of validity per se" (p. 110). The data must be repeatedly examined to ensure that meaning has not been imposed upon nor been omitted from the experience (Wertz, 1984a).

This is a particularly delicate task in this study as a certain amount of interpretation is necessary to discover meanings related to experience that indicate basic qualities of the co-researcher rather than pure description of experience. The purpose of exploration of the life-world of these divorce-mediators is to discover the structures that are meaningful to the experience in order to discover similarities, and from those similarities, describe underlying traits. Wertz (1984a, p. 38) comments that: "Though the most revelatory data is often implied in the research interest . . . it's ultimate value and limits are often disclosed only in the analysis and practical application." Polkinghorne (1979) elaborates that "the researcher makes explicit the structure which is implicit in the various examples" (p. 9).

In addition to becoming aware of pre-suppositions which may influence data analysis, Wertz (1984a) outlines three other procedures related to validity.

First, the analysis of each individual's experience is verified with the co-researcher. Co-researchers are asked to read the analysis and comment on it's accuracy. Secondly, the general description of the essential constituents of the study is verified with each participant. This is critical when some aspect of the research is not mentioned by all co-researchers. Not all of the elements may be mentioned by all of the participants, although when asked, they may affirm them to also be true of their own experience. Thirdly, other individuals who have experienced the phenomenon under study, should be able to identify with the general description. As an example, other divorce mediators should be able to relate to my experience of violent emotions with the young man that I encountered on my first day as a divorce mediator.

Recognition of phenomenon by other people is the phenomenological equivalent of generalizability in natural science. Experimental researchers attempt to sample large numbers, using procedures such as random assignment to ensure external validity. Unlike natural science research, there is no specific rule in human science about the number of subjects needed for study. Rather a sufficient number are selected so as to discover the meaning of a particular experience (Colaizzi, 1978).

An important method in phenomenology is the elimination of redundant data. Wertz (1984a, p. 34), however, cautions against reduction for the sake of eliminating data, and reminds that "repetition expresses an important emphasis crucial to understanding the original situation." Validation is a continuous process, achieved when correspondence between what is said and what is learned occurs. It is not enough that the truth be identified by the researcher. The truth as it emerges

must be agreed upon by the co-researcher and clearly understood by all who follow the research. That is, would another researcher or reader see what the researchers saw in light of the researchers perspectives (Giorgi, 1975)? For Wertz (1984a), the question centers on whether the description of the experience expresses the truth of the situation as it is lived by the subjects.

Reliability

In natural science, reliability is a concept distinct from validity, although critical in that reliability must be proved in conjunction with validity. If the results of a study can be duplicated, and can estimate how much of the result is a true measure not given to systematic error, the measure is said to be reliable (Smith & Glass, 1987). If the size of an error is unknown, the study is of little use. It is important to know that each time a similar measurement is taken the results will be either the same or nearly so. Results can then be considered to be reliable in that existing relationships can be explained with more confidence.

Human science views reliability as inextricable from validity rather than a distinct concept. This is because the objective of reliability is the focus on the essential meaning of the phenomenon being studied. Wertz (1984b) defines reliability as "the persistence of meaning through the factual variations" in that the many knowings of the one phenomena never perfectly coincide with each other. He concludes that "truth" (used in the human science sense) and "error" (used from the natural science perspective) "thereby exchange places for neither is absolute." In effect the researcher must exchange the uncertainty of scientific error for the uncertainty inherent in described truth.

Importance of Language

Mark Twain is often quoted as saying that the difference between the right word and the nearly right word is the same as that between lightning and the lightning bug. Descriptive research is vulnerable to the vagaries of language tone, shade, and precision in an effort to illuminate the phenomena. Language mediates the structure of concepts (Wertz, 1984b). "Language is a central point where I and world meet, or rather, manifest their original unity" (Godamer, 1975, p. 346). It is the researcher's task to isolate and identify meaning from the co-researcher's words. "The phenomenological researcher assumes a given which is reflected in language, but not equivalent to language. Phenomenological research attempts to clarify and describe carefully the structures through which the givens of experience appear" (Polkinghorne, 1979). As previously mentioned, a subtle dimension is required in this investigation much like all phenomenological research, in that the co-researcher's life-world experiences require interpretation to discover their qualities. Wertz (1984b, p. 32) comments that "the researcher thereby grasps the whole of the phenomenon through the part expressed by the subject making explicit the implicit root of the matter."

Natural science and human science are based on different philosophies which ask different questions and thus have different goals. Phenomenological method does not provide solutions for problems but seeks to illuminate a phenomena so that understanding is accurate. In this way, questions for future research can be developed that will be relevant to the problem. To this end, issues such as validity, reliability and the importance of language in phenomenological research must be addressed in order for the researcher to proceed with the study.

Chapter 3:
Methodology

The following chapter describes how methodological considerations were applied to this study. Methodology is described in sequence, although the nature of phenomenology demands re-evaluation of the data as new understandings emerge.

Rationale for Study

In addition to the personal satisfaction that comes from answering a question previously vague or unanswerable, it is every researcher's dream to contribute to the knowledge base of their discipline in a meaningful way. The purpose of a study into the shared qualities of effective divorce mediators is the investigation of qualities that divorce mediation clients perceive, and at some level know, although they may not be able to articulate their understanding. These clients are aware that the rest of their lives, and those of their children, will be influenced by the decisions taken during the divorce mediation process. Qualities of the mediator become critical at a time when emotions make thinking difficult.

Knowing occurs initially at the pre-reflective level. Valle and King (1978) describe pre-reflective thought as "the life-world which is the foundation that is prior to reflective thought." It is characterized by knowing that is sensed without the use of language. Reflective thought is the domain of natural science where all scientific thinking uses language and is based on pre-reflective thinking. Hunches are an example of how unformalized thinking becomes the basis for deductive thought.

In divorce mediation, clients meet and judge their mediator, often on the basis of a "gut feeling." The "gut" feeling is an example of physiognomic knowing, a "sensitivity to the expressive meanings of the object, people things, or places which transcend their physical stimulus attributes" (McConville, 1979, p. 106). Physiognomic knowing has an affective dimension, and a behavioral dimension which blur to produce an overall feeling quality. It is a primitive, pre-theoretical, spontaneous perceptual happening. Issues such as trust, impartiality, understanding and genuineness must be assessed, rapidly assimilated, and decided by clients in the first instance without conscious use of language.

Other factors also indicated that a phenomenological study would be suitable to the question. An investigation into the shared qualities of professionals with different backgrounds is of interest if the background can be discussed in a manner that can help the researcher to analyze what influence that background may have had on the co-researcher, and include the results of such an analysis in the discussion so that members of both professions may profit from the results, remembering that human science seeks to understand the phenomena rather than to find cause and effect as in natural science.

There are very few experienced divorce mediators in the province of Alberta. It is reasonable to assume that not all divorce mediators are equally effective. In fact, many mediators listed as members of the Alberta Association of Divorce Mediators do not practice mediation consistently, if at all. The question, "what are the qualities shared by effective divorce mediators, (as identified by their peers)?" seemed to be best answered by examining the lived experiences of

experienced, effective divorce mediators in order to discover the "ways-of-being" in that experience, that they hold in common.

Colaizzi (1978) points out that there is no such thing as *the* phenomenological method. Guidelines, however, have been developed to help engage with and make sense of the phenomena. Wertz (1984a) outlines three approaches to phenomenologically oriented research: the comprehensive theoretical, the phenomenal, and the reflective empirical. According to Wertz (1984a), the Reflective Empirical procedure is preferable in that it allows the researcher to go beyond the phenomenal method by using the "reflective powers of the researcher to disclose meaning including implicit dimensions, relations and relative importance with the essential structure of the phenomena" (p. 32). In this way the whole of the phenomena is revealed through the part expressed by the subject, making explicit the implicit root of the matter. Interpretation is a part of human sciences, both in the way data are gathered and in the way they are interpreted (Taylor, 1971). In the present study, the nature of the question demands that the data be interpreted within the pre-conceptual overlay of personal qualities, but are based on the structures allowed to emerge from experience.

My reflections of the data which resulted in categories of characteristics for each co-researcher, could certainly be labeled with alternative terms by another researcher. The purpose of a phenomenal study is to illuminate the question in such a manner that the meaning in the data will be apparent to all those who follow the study regardless of the language used. Fischer and Wertz (1979) define empirical as: "(a) our reflection on actual events, and to (b) our making available to

colleagues the data and scope of analysis that led to our findings so they might see for themselves whether and how they could come to similar findings" (p. 136).

The guidelines used to shape the inquiry into the essential characteristics of divorce mediators are those of Wertz (1984a), Colaizzi (1978), Becker (1986), and Polkinghorne (1979). As with all investigations in the phenomenal realm, I undertook to examine my thoughts, feelings, and preconceived notions about the kinds of qualities that I would find, and that I would like to find, in divorce mediators across educational backgrounds. These findings are described briefly in my personal narrative in chapter one and in the following section.

Orientation and Bracketing

The inaugural phase of phenomenological reduction is a personal process. To become aware of values and biases that might influence research results, researchers must understand the genesis of their interest (orientation) and the accompanying pre-suppositions, a procedure known as bracketing (Colaizzi, 1978). Rollo May (1972) proposed that all of scientific knowledge is based to some degree on some kind of philosophic presupposition. The only error is not to be aware of these assumptions; the only illusion is to deny them". Bracketing is accomplished through a rigorous, personally honest purification of pre-judgements and the purposeful discarding of preconceived answers to questions about the givens under investigation (Polkinghorne, 1979). In this way, the relationship between the data and how it appears to the researcher is made clear (Colaizzi, 1978).

My orientation towards attributes has been long held. As a child I watched the people in my parents' stores talk and laugh and sometimes argue. I would wonder why I knew that one person was kind and gentle and another, who seemed to be the same, was not. As a nurse, I would wonder about the differences in people that made illness a welcome blanket for some and an irritant to others. I have never surmounted the wonder of having my own children who are vastly different in so many ways and yet share similarities. At university, my horror to find that theories of personality are many and manifold, turned to a wry amusement as I realized that one of my own qualities is an impatience with a slow process. I enjoy thinking quickly and finding the nub or the core in people or academic problems. I am also aware that one of my counterbalancing traits is tenacity. In addition, I take particular pleasure in understanding the complexities of issues such as personality theory, once I discovered that there were many nubs to be learned and not a single truth. Research into the shared qualities of divorce mediators presupposes a single truth. I expect, however, to find several truths about the participants of the study. Perhaps it would be more accurate to look for the conditions present in co-researchers necessary to effective mediation, since people do not remain static. Growth and change implies change in the core conditions present in effective mediators as well as their clients so that an effective mediator may become less effective as interests and meaning change.

Bracketing as outlined above can be a naive exercise since all experience will in some part influence interpretation (Wertz, 1984a). None-the-less, it is an important part of human science research because it demands an ongoing awareness that might otherwise have encouraged inaccurate data analysis and destroyed the

validity of the study. Colaizzi (1978) poses three questions to be addressed in the bracketing stage.

(a) How did I come to be involved with this particular phenomena?

(b) Why did I choose the phenomena I chose to study?

(c) How might my personal inclinations and predispositions as to research value, influence or bias how and what I investigate?

In response to the first of Colaizzi's questions, I came to be involved with divorce mediation during a practicum as part of my counselor education. The agency also provides short-term individual counseling, marriage counseling, and divorce therapy which makes the placement a varied and valuable experience for a beginning counselor. I found family and couple counseling as well as mediation, to be rewarding. This type of counseling calls for the counselor to be mentally active and flexible enough to understand more than one person's viewpoint at one time. The notion of divorce mediation appealed to me since I disliked the results the adversarial system had forced upon friends and particularly their children.

In terms of Colaizzi's second question, I came to the study of shared qualities of divorce mediators because of two events that caused me to become emotionally involved in divorce mediation. The first has already been mentioned as my first day "on the job" when I discovered the explosive emotions that often accompany divorce and custody arrangements. My feelings of inadequacy as an inexperienced counselor were coupled with a physical visceral reaction common in flight-fright symptomology. The second precipitating incident came when a friend, a divorce lawyer of some influence, told me that divorce should only be mediated by lawyers. I experienced the same visceral reaction from anger and a longing to

reply to the provocation. Some time later, I could laugh at my feelings of anger. I realized that I had interpreted his remarks as his perception that psychologists in general are incompetent, and as patronizing to me in particular. My original intention was to study the differences in effectiveness of lawyers and psychologists in divorce mediation with the purpose of finding psychologists to be superior in this area. Thankfully, the mean-mindedness of this intent shamed me into an appraisal of the situation in Alberta, where both professions are represented in the Divorce Mediation Association. A graduate level sub-specialty in divorce mediation as proposed by Koopman (1985) is a remote possibility. Reality in Alberta, found both professions mediating successful (i.e., signed) agreements. A study to discover who was a better mediator based on profession seemed fruitless, serving little purpose, much like the arguments between natural scientists and human scientists. I began to wonder how people with diverse educational backgrounds, albeit both at a post graduate level, could both be successful.

Relative to Colaizzi's third question, I assumed that the adversarial training lawyers receive would pervade their thinking and be counterproductive to the process of divorce mediation. I also presumed that emotional damage would be inflicted upon either the correspondents themselves or on their family, by a person unskilled in therapy.

I realized that I also pre-supposed that divorce mediation was similar to counselling, and the qualities inherent in a good counselor would be the same as those found in an effective mediator. I based the qualities on those outlined by the Association for Counselor Education (1964), which lists six basic qualities: a belief

in each individual, a commitment to individual human values, an alertness to the world, open-mindedness, understanding of self, and professional commitment.

Experience taught that divorce mediators work in a highly charged atmosphere; one that is usually filled with tension, and with feelings of hate or guilt. I had discovered that mental toughness was also a necessary quality of a mediator. I was struck by the incongruity between two slightly built, charming women mediators at the agency where I gained my practical education, and the demands of their work. I wondered what qualities I would find if I met other mediators.

In a study of effective and ineffective counsellors, Soper (1963) found that effective counsellors perceived their clients to be capable, worthy, dependable, and friendly, and perceived themselves as altruistic and non-dominating. I began to wonder if these might be the traits I would find in all effective mediators regardless of background. In counselling, the self is the most effective instrument (Ivey, Ivey, & Downing, 1987). This means that counselors know themselves, how they are perceived by clients, and their style of relating to clients evolves because it is the best fit for themselves. Perhaps all effective mediators used themselves as an instrument as counselors are taught. I realized that I would have to be careful not to attribute qualities that do not exist in co-researchers to support my theory that divorce mediators are more the same than they are different.

As a human science researcher, I welcome the opportunity to examine and articulate my biases so that the study may be not value free as natural science attempts, but easily followed by others interested in the same subject. In a sense the project is inextricable from the researcher who co-constitutes with her word as

do the co-researchers. Our worlds join and are influenced by our experiences as divorce mediators.

Description of Co-researchers

The purpose of phenomenological research is to increase the understanding of the phenomena. The basic criterion for the choice of co-researchers is whether they can illuminate the phenomenon under study (Wertz, 1984a). Usually preferred subjects are centrally involved with the phenomenon, and have many life experiences of it to talk about (Becker, 1986). In accordance with accepted phenomenological practice, participants were chosen who could provide "rich and articulate descriptions" (Polkinghorne, 1979) of their lived experiences as divorce mediators.

The definition of an effective divorce mediator was by necessity arbitrary and pragmatic. Divorce mediators whose clients were thought to be satisfied with the results of their negotiations, indicated by a low rate of return for renegotiated settlements or to the court process , and by their expressed satisfaction, were judged to be effective. Experience as a divorce mediator became another discriminating factor. A third expectation was held in regard to favorable reports that had been received by other professionals as well as their clients.

Since divorce mediation is a relatively narrow field with a short history and few practioners, I relied on an informal canvass of opinion to identify effective mediators. I asked several divorce lawyers whom they would recommend as an effective mediator in both professions. I repeated the process and asked divorce mediators who were also psychologists whom they would recommend as an

effective mediator from both fields. I then chose the people whose names appeared most frequently as an effective divorce mediator and who had the most experience in terms of cases rather than length of practice. I chose one person of each gender from each profession to investigate the possibility of gender dominated qualities.

Although I am a relatively inexperienced divorce mediator, I felt that my own experience would provide variability and contrast discussed by Polkinghorne (1979). Some experience of the phenomenon is preferable for the researcher in order to enhance rapport with co-researchers and to be able to comprehend and articulate the goals of the research project. Becker (1986) encourages her students to make their samples as "homogeneous as possible because this helps them to articulate the essential structure and constituents of a phenomenon" (p. 106). In light of this advice, I was pleased to find the levels of experience comparable for co-researchers within professions.

Two lawyers and two psychologists agreed without hesitation, to in-depth interviews. Three of the four co-researchers were completely unknown to me and their willingness to help on behalf of their profession and of mediators gave rise to another pre-supposition that each of the four held altruistic characteristics and/or a dedication to the ideals of mediation and of their profession. Colaizzi (1978) advises that a sufficient number of participants be selected so as to discover the pattern of experience. Given the length of each interview, and the time needed to analyze the data, I decided upon four people who were matched in terms of experience. One male lawyer and one female lawyer, each of whom had been at the bar 12-13 years and who also practice as divorce mediators, were invited to discuss

their lived experiences. One male and one female psychologist who reported more case experience during a ten year period than the lawyers, were similarly invited.

Interview Process

The most important principle that guides interviews is a respect for the interpersonal encounter between the researcher and the co-researcher. "The relationship should be a means to a goal rather than the goal itself" (Becker, 1986, p. 108). In this regard, my position as student and novice as a divorce mediator was helpful. My respect for each of the co-researchers was genuine given what I had learned about their work. In addition, I found that I was able to learn a great deal from each person. Although I had some experience, my need to know was genuine and prompted a complete explanation of different aspects of the life-world of a divorce mediator.

The interviews were conducted between a period from November, 1988 to June, 1989. Initial contact was made by telephone with three co-researchers. The fourth agreed to be interviewed during the course of a meeting. A short explanation of phenomenological research was given. I explained that two or possibly three in-depth interviews would be required to discuss the aspects of their work that they found to be meaningful. Each person was told that the purpose of the study was to find underlying qualities, if any, that existed across educational backgrounds of divorce mediators. To this end, I wanted to explore their feelings, how they interacted with their work-world, and how they perceived their experiences when mediating divorce cases.

Interviews were conducted in the co-researcher's office where mediation is conducted and where the co-researcher was comfortable in the interview process. Interviews were scheduled at the end of each working day so that the opportunity to relax and discuss a subject of mutual interest "off the top of the head" would provide less guarded data. This was important because in a study that looks for qualities, it is natural to present the best possible picture of oneself. I felt it would be unethical to present a "story" about the purpose of the research as often happens in natural science in the belief that prior knowledge compromises data. In my opinion, a "story" would destroy a relationship based on equality and respect.

The first interview was unstructured. In a review of the purpose of the study, I emphasized that the co-researchers should not try to tell me what they thought I would like to know, but to talk about the aspects of divorce mediation that they felt to be most important, giving their feelings and examples about the topic under discussion. I explained that the purpose of an unstructured interview was to have characteristics revealed through their experiences as a divorce mediator. At the same time, I would not try to influence the discussion, recognizing that any input I might give would in some way influence the direction of the data, if not the data itself. According to Wertz (1984a) a non-directive approach best helps to avoid generation of research biased data. I began each interview with the nondirective question, "How did you become a divorce mediator?" The first interview served to build rapport but was not limited to this purpose. It lasted 2 - 2-1/2 hours.

The second interview followed experiences that had generated feeling statements. In some cases I asked for examples of situations where feeling statements were omitted in the previous interview. Each co-researcher was asked at

the end of the second interview to describe the qualities they would expect to find in a divorce mediator from another part of the world as well as in North America. The final question was to describe any part of your experience as a mediator that you have not discussed but would like to investigate. An invitation was extended to the co-researchers to call me with additional data should they want to add to or clarify any part of our discussion. In two cases, a technical malfunction forced a third interview. One interview was partially recorded and one totally lost.

Confidentiality and informed consent were discussed during each meeting. A personally meaningful pseudonym was chosen by each co-researcher after the interviews had been concluded. As a matter of courtesy and to ensure validity, a copy of each individual's analysis was couriered or delivered by hand to the co-researchers to determine whether they agreed with the analysis

Data Analysis

The sequence of data analysis follows. It is based upon the steps outlined by Colaizzi (1978), Wertz (1984a), and Polkinghorne (1979).

1. Each interview was audiotaped with varying results. The second interview from two co-researchers was lost or partially lost forcing a third interview. To minimize error, a court reporter with extensive audiotape experience transcribed the interviews.
2. Each of the eight transcripts was read a minimum of four times before analysis began. Interpretation for each co-researcher was outlined before the next transcript was examined. Close attention was paid to repeated statements.

3. Significant words, phrases, sentences or thoughts from each transcript were underlined, without making reference to the other transcripts.
4. Excerpts from each transcript were paraphrased as a first level analysis and extrapolated into meaning units (Colaizzi, 1978).
5. Meaning units revealing similar themes were analyzed and clustered into fewer units. The paraphrases and themes were re-evaluated several times to ensure that the experiences and thoughts of each co-researcher accurately reflected the qualities of the co-researchers. The first order clustering of themes (see Tables 1a, 2a, 3a, and 4a in the Appendix) were then examined to allow a higher level of meaning to be abstracted.
6. The second order clusters provided the basis for the individual interpretive analysis (see Table 1b, 2b, 3b and 4b in Chapter 4).
7. Tabular summaries of both levels of abstraction were prepared.
8. Each co-researcher was provided with tables representing both levels of abstraction for his or her individual interviews. An explanation showing the evolution of meaning in column form (see Chapter 4) was included with the tables. A copy of each person's individual analysis completed the package.
9. The analysis was couriered to the co-researchers for their comment and verification. In two cases, minor changes were made to improve clarity. All co-researchers verified the analysis as representative of the qualities they bring to mediation. Reactions from the co-researchers were positive. Individual remarks such as "you have a good ability to translate my comments correctly" validated each interpretation.

10. Comparisons of the qualities that emerged for the four co-researchers from the higher order clusters were synthesized into an overall analysis.

Discussion of the qualities that emerge for each mediator is presented in Chapter 4.

Chapter 4

Results and Discussion

Individual descriptions of each participant are presented in this chapter. Although qualities that emerged for each participant resulted from different experiences, and the way each person interpreted their experiences was individual, several themes became apparent. Discussion of shared qualities follows individual analysis.

Introduction

Issues arising from two in-depth interviews were initially analyzed in sequence for each person. Tables 1a, 2a, 3a, and 4a (see Appendix) represent thematic abstractions of each person's experience. A higher order clustering of qualities generated by the co-researchers' experience is represented by Table 1b, 2b, 3b and 4b, resulting in six major themes for discussion. The higher order tables are presented prior to individual analysis of each co-researcher in the following section.

Interpretation of data varies according to the intent of the researcher. The purpose of this analysis is the discovery of qualities shared by divorce mediators from two different educational and theoretical backgrounds. The following section will begin with a summary of the qualities that emerged from an examination of each individual divorce mediator's experience.

Table # 1B

Higher order thematic descriptions of Joe's mediation experience.

Thematic clusters		
1. Motivation	(a) Primary motivation to mediate centers on the best interest of children. Excepts Nos. from table 1: (2, 9, 13, 14, 41, 44, 45, 57, 58).	Aware that background as child psychotherapist and desire to ease conflict for children comes from personal background. Uncomfortable with hostility but strong belief children victims of divorce who need help. Believes parents must regain parenting skills, and focus on how best to help their children in divorce.
	(b) Therapeutic orientation. (1, 3, 4, 12, 33, 37).	Recognized family's task to change needs psychological help. Initial orientation counseling. End goal, acceptance of divorce. Structures meetings so lawyers part of mental health process.
2. Change in World-view (6, 15, 16)		Changed mediation techniques with realization that end goal of marriage counseling different than mediation. Became more comfortable in hostile sessions when decision to mediate for the sake of the children made. Reframed as human issue that needs treatment.
3. Professional Orientation	(a) Issues of professionalism (17, 19, 27, 40, 61, 62).	Believes difficult work should be reflected in the price. Committed to profession and willing to be evaluated. Takes responsibility for mediation process, establishes trust by professional conduct, committed to therapeutic end goal of mediation and goals of counselling.
	(b) Professional recognition that mediation goal directed. (26, 42, 43).	Always area of goal to settle and secondary goal of emotional acceptance to divorce. Uses techniques such as empathy and acknowledgement to facilitate goal.
	(c) Recognition of Professional limits (46, 47, 48, 49).	Realistic about the problem that all agreements not ideal, will accept situations that make things better for the children. Realistic that all people not suitable for mediation. Aware that personal value system prevents agreements (i.e. Success).
	(d) Personal satisfaction in work (16, 36, 60, 56)	Derives personal meaning helping people find solutions to conflict and emotional acceptance of divorce as well as clients appreciation.
4. Belief and value systems	(a) Teacher Role. (11, 32, 33, 63).	Believes parents need to be taught about children, effect of divorce on all family members, stages of divorce, and the form the family takes after divorce.

	(b) Use of personal value system. (31, 39, 48).	Uses personal values about best interests of children to suggest solutions. Will not mediate if clients not able or ready. Returns responsibility to client or lawyer rather than make an unfair agreement.
5. Counselor Qualities	(a) Polycentric Empathy (7,. 50, 56)	Able to understand perspective of more than one person at the same time, to show and maintain all clients respect.
	(b) Empathy (10, 35, 53, 54, 64)	Shows understanding for clients by his manner and way of speech with them and discussion with others.
	(c) Non-Judgmental (22, 52)	Believes rigid views of right and truth destructive to clients. Prefers balance.
	(d) Views people as being capable (24, 28, 29, 49)	Aware that own views in situations not meaningful to clients. Mediator facilitator for decisions based on their explication of issues. Means client should take credit for success.
	(e) Self awareness (8, 25, 51, 55)	Aware of bias towards best interest of children doctrine, when responsibility forced upon him, of therapeutic orientation, attitude to clients, influence on clients and their influence on him when touched by something.
	(f) Attitude towards clients respectful. (30, 50, 54)	Views out of character behavior as aberration. expresses respect, disdains others who do not respect clients.
	(g) Communicator (38)	Assumes role of communicator in inter-disciplinary meetings as well as empathic communication.
6. Characteristic of lawyers and of psychologists.	Enjoyment of analysis and problem solving (18, 34, 59)	Looks beyond obvious issues to determine balance between truths, to discover if clients ready to mediate. Main interest is emotional process of change. Objective and analytical.

NOTE: Higher order thematic descriptions extracted from two levels of abstraction in Table 1. The numbers in parentheses refer to Joe's verbal reflections and experience in column one.

Individual Analysis

Joe

Joe has a Ph.D. in clinical psychology. He has been a practicing psychotherapist for twenty years, specializing in child psychotherapy. The divorce mediation aspect of his practise evolved from family evaluations requested by lawyers for use in the adversarial litigation process of divorce. Joe's move into mediation was motivated by a strong belief that children suffer from the conflict present in many divorcing families. He is clear that his reason for mediating settlements was "not because I liked it, but because I was concerned about the children." Joe's concern stems from his own experience as a child when he was the subject of parental conflict. Although the conflict was muted, it was deeply felt. In part, Joe's experience led him to a child psychotherapy practise now enlarged to include divorce mediation. He feels that children are victims of divorce who need help, the kind of help "that I wish I had had, and that I needed when I was a child." Joe says that he does not place blame on parents but his opinion formulates the conviction that parents need to regain or learn parenting skills, and focus on how they can best help their children with the divorce of two people that they love. His goal is to promote harmony in the lives of the children of divorce through a balanced resolution to the marriage.

Joe's therapeutic orientation to divorce mediation is evident. He says "I think I am offering a mental health service for the problem that people are having in saying goodbye." He recognizes that a family's task to change often needs psychological help and he defines the end goal of mediation as the acceptance of

divorce, similar to the definition of Irving and Benjamin (1987) which calls for the emotional acceptance to the end of the marital relationship. Joe speaks with a wry humour about his therapeutic orientation and the problems that he experienced when he first began to mediate. Joe recalls that his initial attempts helped people to understand each other and "unfortunately I would be very successful until there would be such an escalation of conflict that it would blow the mediation and every thing right out of the water. And the mediation would stop and fail." Joe's predilection for analysis is illustrated by his experience with a colleague whom he enlisted to help him sort out what was going wrong. He observes that "we figured that applying the techniques of saying hello was inappropriate and counter-productive to families in mediation because the real task is good-bye."

Reflection on these initial failures, so considered because the couple returned to litigation thereby impeding emotional acceptance of the divorce, brought about a change in world-view for Joe. His realization that the goals of mediation and the goals of counseling are discrepant created a transition in his professional role. The realization did not make him any more comfortable with the hostility expressed in mediation sessions. It was only when he experienced another change in world-view that he began to gain a sense of personal satisfaction from the divorce mediation experience. "It was only when I learned that there is a human issue here that needs treatment, and it's (mediation) quite rewarding", did Joe accept the emotional hostility that often accompanies divorce mediation. It is conceivable that having been raised in a family which concealed hostility, Joe would not be comfortable in situations of open conflict. Once he looked beyond the actions of his clients and began to investigate the purpose of these actions from a

therapeutic standpoint, he was able to find meaning in the work involved with mediation. The change-in-world view has prompted a change in the way he now conducts the family evaluations that he continues to accept. Joe looks at family evaluations ordered by the courts, from a divorce mediation stance propelled by his concern that as far as possible the best interests of children be met.

Joe is committed to his profession and to the mediation process. When he makes court based evaluations for an assessment, he says that he is comfortable with the process because "I'm prepared to defend as a psychologist, the recommendations I've made and why I've made them." He assumes a professional responsibility for the mediation process without assuming responsibility for the substance of an agreement. His professional confidence enables him to call case conferences where all participants, both lawyers and disputants, are made to understand the purpose of the mediation. He has a feeling of professional worth and takes pride in facilitating "sound balanced agreements and (when) the children are going to be fine."

Joe's professional commitment to the mediation process is illustrated by the emphasis he places on the goals of mediation. He observes that he is always aware of the goal to settle an agreement and the attendant goal of emotional acceptance of the divorce. Joe's twenty years experience as a therapist have synthesized counseling techniques so much that they are part of the ready-to-hand involvement described by Heidegger (Packer, 1985). Joe talks about using counseling techniques such as empathy and acknowledgement to facilitate his goal from an observer's perspective that is found in the present-to-hand mode of engagement.

He considers that in mediation the clients emotional issues must be dealt with but that "their own personal therapy about that (one particular) issue is a side issue."

Joe's recent experience in which siblings of a family were separated, underscore his professional limitations. Joe recounts the tale with a resignation that recognizes that not all agreements are ideal but are acceptable if they "make things better than what is going on now." The cumulative results of his experience have taught Joe that professional limitations are inherent in divorce mediation. Joe has come to the opinion that limitations forced upon him by the negotiators are an opportunity to return responsibility to the clients. He notes that "it's a powerful time to let everybody decide that we really can't solve this problem, and mediation fails." He observes that it is ironic that often the process of failing mediation forces the recalcitrant person to re-evaluate, which then results in a signed agreement. In each instance the decision about the success or failure of the particular mediation is based on Joe's personal values and belief systems.

Realistic recognition of professional limitations involves some decision about what is best for the family and for the children, and an evaluation of what will work based on Joe's experience and value system. He routinely returns the responsibility for negotiations to the clients or their lawyer rather than "mediate an agreement that is unreasonable." He uses his experience to suggest successful solutions other people have used based on his evaluation of conditions that would be best for the children. Joe discusses his personal feeling of liberation in a case where parents each tried their own ideas by alternate months to come to a decision about which system worked best for them. His point was that the process had evolved a routine that was best for the children, the focus of his major concerns.

His value system forces Joe to refuse to mediate with a client who has not accepted the need for divorce, because it would be unfair to the unready person who would be placed at a disadvantage. "I point out to the couple the futility of trying to resolve issues of the past." In doing, so he helps to bring closure to the marriage by using a therapeutic teacher role.

The teacher role in mediation is much stronger than in counseling (Blades, 1984). Joe explains children's feelings about the divorce process to help facilitate acceptance and agreement by the parents. His strong belief in children's vulnerability and their need for harmony is the basis for teaching about developmental stages and about the needs of children as they experience divorce. "When the mediator draws a parallel between how they are feeling (caught in the middle of others opinions) and how the children are feeling (caught in the middle of two parents), Joe says that "they almost always settle down and get more committed to the notion that their kids are not going to go through that."

Throughout the mediation process Joe relies on the qualities and techniques he brings to mediation as an experienced therapist. Individual episodes were difficult for him to recount because he has treated so many people that individual instances were difficult to identify. He spoke articulately and with sensitivity about his experience as a therapist and a divorce mediator in a generic sense. When asked for examples of experience he would begin but soon revert to more generalized opinion. From this perspective, Joe proposes that the single most important quality necessary to an effective mediator is the ability to understand each person's truth "at the same time and to show respect and validation for both people's position."

Joe reflects empathy for his clients by his manner and discussion. "I know they are suffering, and that I'm compassionate towards that suffering and that I'm prepared to understand is a way of communicating to people when they are at their worst." He is able to make parents aware of the empathy he has for the children when he explains that children need to show their loyalty to both parents, and "how better to show your loyalty than to say something negative about the other parent." Joe opinion is that it is not enough to understand, but that you must convey your understanding. He carries his communication skills to other professionals in order to enhance acceptance of an agreement by opposing counsel.

Joe has a high level of self-awareness about the techniques he uses and the reasons for their use. He is aware of his bias towards the best interest of children doctrine. Joe understands that he and other professionals have influence with their clients and that they in turn can influence him, especially if he is "touched by their story or feelings." He is open about mistakes and is aware that when they are made it is often because responsibility for decisions has been forced upon him by clients, and he moves quickly to return the agency to them.

He exhibits respect for clients in the belief that they are capable and responsible people. His notion that people "go a little crazy during a divorce" makes an allowance for the way people act at this time and gives respect to the underlying person rather than the actions. The implied nonjudgmental attitude becomes clear when he theorizes that "I would assume that the more dogmatic such a person is about truth and right in the world, the more difficulty that person would have with mediation."

Joe's propensity to look beyond the surface indicates a quality found in counselors and in lawyers, as well a many others, which is an enjoyment of mental problem solving and being mentally absorbed by their work. Results of Joe's work depend on an accurate analysis of the situation and of the people involved. To do so requires an ability to distance himself emotionally, while remaining physically involved in a situation he admits that "I find filled with tension." Analysis also calls for an ability to synthesize, and at the same time to remain open to change re-evaluating and re-synthesizing as the situation demands.

The practise of synthesis has become so ingrained that Joe had difficulty discussing individual cases. Similarly, he remained detached as he kept the division between his personal life and his professional life distinct, using distancing language when describing the way in which his work influences his family life. The satisfaction Joe finds looking beneath the surface is exemplified by his main interest, which is the journey of emotional change that each client hopefully makes to a therapeutic end. In this interest he will endure personal discomfort, constantly looking below the surface in his clients for symptoms of change that will ultimately benefit the children of divorce.

Table # 2B

Higher order thematic descriptions of Cecile's mediation experience.

Thematic clusters		
1. Motivation	(a) Best interest of children (6, 24, 31, 44, 76, 77, 81).	Primary motivation best interests of children, works to have self-determined maintenance so children will gain. Best for children to have two parents. Unequal settlements unfair to children. Satisfaction knowing children have been helped by mediation. Purpose of mediation to form different relationship to enable good parenting of children. Feels loss for children when one parent alienated from the children.
	(b) Therapeutic Orientation (13, 44, 51, 69, 82).	Therapeutic goal to have emotionally independent clients. Enjoys having been helpful when family reports doing well. Encourages positive personal growth. Uses techniques that will help client grow. Genuine feeling of sadness when clients unable to grow, providing support for the children.
2. Change in World View (16))	Began mediation as a counselor. Now does mostly mediation which provides satisfaction when children of divorcing families are cushioned as much as possible by the effects of the parents divorce.	
3. Professional Orientation	(a) Professionalism (17, 25)	Professional about interchangeable roles. Committed to the goals of whichever service she is providing.
	(b) Professional recognition that mediation goal directed (1, 2, 3, 15, 22, 34, 37, 39, 41, 43, 70).	Recognition that counseling and mediation goals different. Mediation-agreement most basic form of success. Success when both disputants are pleased with agreement. Actively encourages people to negotiate to form agreement. Indicates responsibility to both partners in order to maintain trust and enhance goals. Offers respect to attain goal. Breaks negotiations into manageable components to increase chance of success. Therapeutic orientation enables negotiations. Aware of time constraints.

	(c) Recognition of professional limits (54, 65, 82).	Recognition that clients responsible for success or failure of negotiations. Believes clients have a right to choose mediation or litigation. Genuine sadness about the loss of one parent to the children because it is the clients choice.
	(d) Personal satisfaction in work (4, 36, 37, 44, 46, 50, 54).	Gains satisfaction from benefit to children from mediation process and parents ability to be better parents after being taught about the effects of divorce of individual developmental stages. Professional pride in competence is experienced as energizing and gives personal meaning to life.
4. Belief and Value Systems (11, 18, 19, 20, 29, 30, 64, 70).	Strong belief that faith in clients ability empowers them to therapeutic end. Judges clients ability to negotiate from a position of power, abuse, lack of information. Will not mediate perceived unfair settlement for either spouse. Strong belief in right to choose form of agreement.	
	(a) Teacher role (21, 53, 57, 80).	Important to teach stages of divorce and feelings that are normal to clients to facilitate understanding and therapeutic growth. Thinks teaching about developmental stages of children and how they can be helped by parents most important aspect of teacher role.
	(b) Mediator qualities (8, 10, 73).	Believes underlying traits in mediators make training possible across disciplines. Speculates that lawyers would have harder time if naturally directive. Believes lawyers agreement oriented at expense of emotions with less attendance to therapeutic goals.
5. Counselor Qualities	(a) Polycentric empathy (22, 68).	Understands each persons point of view not necessarily what they're saying, and is careful to reflect her understanding to the clients so that they know that she understands each.
	(b) Empathy (40, 41, 56, 66, 67, 70).	Belief that you must know what it is like to be in clients shoes and accept the person in order to be helpful. Must let client know that unnatural behavior natural at this time. Knowing based on feeling how the client must view self.

	(c) Views clients as capable (9, 11, 26, 27, 28, 55, 60, 64).	Fundamental belief that people are capable of solving their own problems and responsible for themselves. If given opportunity client will respond and encounter personal growth. Belief stems from expectations placed on her as a child that she was capable. Women also capable especially when given the same information as their spouse.
	(d) Views clients with respect (34, 48, 52, 63).	Client must recognize responsibility inherent in choice. Enjoys and respects clients similar to self. Accepts people not functioning normally and accords them respect for getting on with the business at hand. Choice of divorce method lends respect to client.
	(e) Self-awareness (12, 14, 47, 75).	Recognition of biases towards best interest of the children and belief in clients capability. Views self as self-reliant problem solver. Recognizes the areas she would be effective in. Aware that she prefers to be an effective person. Views self as having counselor qualities.
	(f) Genuine and open (32, 33, 72).	Does not mind personal questions from clients and answers with honesty. Clients will sense insincerity so must truly believe in their capability and be truly empathetic.
	(g) Non-judgmental (38, 65).	Must not judge clients but try to understand how their situation appears to them. Goal directed. Right to choice outweighs Cecile's thoughts about divorce method.
	(h) Use of observation skills (58, 61).	Observation skills integrated and first evident on a physiognomic level. Watches clients carefully to evaluate.
6. Enjoyment of analysis and problem solving (7, 35, 45).	Enjoys helping to find creative solutions to facilitate agreement. Steps outside of self to analyse session. Evaluates clients to understand and to make progress in mediation. Detaches self from other peoples emotions.	

NOTE: Higher order thematic descriptions extracted from two levels of abstraction in Table 3. The numbers in parentheses refer to Cecile's verbal reflections and experience in column one.

Cecile.

Cecile is a registered psychologist who holds a M.Ed. degree in counseling psychology and who has worked as a counselor and divorce mediator with a government agency for eleven years. Of the four co-researchers, Cecile has the most divorce mediation experience. She remarks that initially "we did mediation for so many years without its being labeled mediation." One day she found that a book had been written "outlining exactly what we do . . . but we just lumped it under conciliation." The mandate given to Cecile's department provides mediation of child custody, child maintenance, and access to the children of a marriage. Property settlements are encouraged to be facilitated by the couple's lawyers.

Throughout the two interviews, Cecile often spoke of her experiences in the present-to-hand mode outlined by Heidegger (Packer, 1985). Although she regularly used lived examples, it seemed that she was so used to thinking on two levels, the first being present to the client and the second forming conclusions based on her synthesis and analysis of the interview, that she automatically presented a short summation of the experience in general terms.

As Cecile's practice evolved, she found herself facilitating agreements according to the best interest of children. She cites research evidence upholding this belief. The research found that self-determined agreements are more likely to be honored with regard to maintenance orders than imposed decisions. Cecile feels very strongly that it is best for children to have access to both their parents and makes this bias known to parents. If it becomes apparent that a settlement is likely to have an adverse effect on the children, she stops mediation and recommends a home assessment to be forwarded to the courts so that "you can get the best for the

children." Cecile's major source of job satisfaction is knowing that children have been helped by mediation. She is convinced that the primary purpose of divorce mediation is to enable the parents to forge a different relationship in order to form, or continue, good parenting patterns for the sake of the children.

True to her counselor roots, Cecile's secondary motivation in mediation is to develop emotionally independent clients. She encourages positive personal growth. She gave an example of situations in which several of her clients have been "really down and out and I think [to myself] you're going to grow in a really positive way." Cecile experiences divorce mediation as a time to be helpful to her clients, and to engender hope that their distress is only temporary. She works to raise clients self-esteem thereby empowering them and achieving the therapeutic goal of self-sufficiency. Cecile reports genuine feelings of sadness when she is unable to facilitate positive growth and realizes that the client will remain entrenched in unhealthy attitudes. She mourns for the children of an embittered client and observes that "when you look at that person and think what hope is there for that individual to ever have any happiness in [her] life?"

Cecile experienced a change in world-view about the changing goals of mediation as compared to the psychological goals of counseling. She feels that the evaluation of counseling clients is subjective, whereas in mediation a signed agreement with or without the attendant goals of the children's best interest and therapeutic gain, is considered to be a success. She commits herself to the goals of whichever process she is conducting. In divorce mediation, Cecile finds the most satisfaction when the therapeutic goal and the best interests of children are served.

Professionally, Cecile's mind does not often swerve from the task at hand, which is to reach an negotiated agreement. This is in keeping with the findings of Vanderkooi and Pearson (1983), who noted that mental health professionals changed from a nondirective to a more task-oriented style in mediation. (Nondirective does not imply lack of goals in counseling but that the client is guided to awareness rather than being told.) The data that emerged for Cecile, with regard to task orientation was remarkably strong. The primary goal of mediation re-occurred at regular intervals, such as when Cecile said,"you're acknowledging a person's feelings but you're aware that the task at hand is to negotiate an agreement." She considers a case to be successful "when there is an agreement and both parties are satisfied." Cecile actively encourages participants by saying things like "you've come a long way and if you've come this far there's no reason why you're not going to go on." She encourages goal direction by being honest about the difficulty of the process and by offering her respect. An important aspect of the way Cecile mediates is the breaking of negotiations into manageable components to increase the probability of a successful conclusion. Cecile comments that she is always aware of the time constraints presented by court dates and that her goal is an agreement.

Cecile maintains a high degree of professionalism by reading all the available literature on mediation and subscribes to a number of professional journals. She makes reference to the research in the field when explaining her reasons for some of the choices that she gives to people. She combines her experience with recent research results to facilitate mediation. Cecile has a strong professional orientation towards her work and enjoys feelings of professional

competence. She says that she feels that she is a good facilitator and enjoys a sense of accomplishment even when the gains could be considered to be small, "When I say a sense of accomplishment, it needn't be that we have an agreement worked out. It may be just part of an agreement and there's that satisfaction, oh this was such a tough issue and we've cleared that hurdle and it feels good."

At the same time Cecile is realistic about the limitations of her work. She recognizes that clients are responsible for the success or failure of their negotiations. She believes clients have a right to choose mediation as much as they have a right to choose to litigate a settlement. Professional limitations imposed by client generated choices are recognized and resonate poignantly when she talks about her limitations. "That's the sadness, it's about the children, about these people [she had tried to mediate] and there's nothing I can do."

Cecile's fundamental belief that people are able to solve their own problems stems from her childhood when she was expected to be competent and took pleasure from her successes. She avoids "jumping in to rescue her clients because it would be better for the solutions to come from them." On several occasions Cecile reiterated her faith in the capability of people and comments that it "alleviates a lot of stress for me."

Cecile's belief in the capability of people to solve their own problems extends into her work with women. She maintains that women are capable of acting in their own best interests as well as those of their children, and that they are good negotiators. Although she feels it is patronizing for women lawyers to suggest that women cannot take care of themselves, she says that if she feels that a woman does not understand or is being treated unfairly, such as one lady she

recalled, Cecile makes sure that the client consults a lawyer before continuing to negotiate. The distinction is made by Cecile on an individual basis as opposed to generalization.

Cecile's belief in people is intertwined with the value she places on fair play. On several occasions she would observe as she described various experiences that, "at that time I think it is inappropriate to mediate." Cecile considers it an inappropriate time to mediate when a woman is suspected of being the victim of abuse or if the client needs to understand their rights or feels intimidated by a lack of knowledge. She cites times when "some of these individuals would do anything to get their spouse back," as a time when she refuses to mediate because it would not be fair to do so.

Cecile invests value in the teacher role as a mediator. Her opinion is that it is important to teach the stages of divorce to clients so that they can understand their distress and be comforted by the idea that their emotions are normal for the situation in which they find themselves. She reassures people that there's "always a turning point and things will get better." Cecile often teaches children's stages of development, and how divorce is likely to affect children of different ages. She says "I spend an awful lot of time talking about the Kelly and Wallerstein studies . . about the kinds of things parents can do, how they can work as a team, how important it is for the children's mental and emotional health for them to work as a team."

Cecile has a high level of self-awareness. Professionally, a counselor is bound to reveal bias but it is possible to reveal only that of which you are aware. She is explicit about her motivation being in the best interests of children; " I tell

people that I have advised, [that] my bias is that children need to have contact with two parents and [that] I also have a bias towards joint custody." The term joint custody may be confusing. It does not mean joint parenting, only that legal responsibility, major educational decisions, and major health decisions reside with both parents.

She is aware of a personal attitude of faith about women that enables her to have peace of mind about the results of the negotiations. Her awareness activates an internal concern about her belief that women are capable, competent and good negotiators. "I wonder how effective I would be as a mediator if I saw women not quite as competent as men? . . . I think that financially, men have the upper hand but when it comes to children, women have the upper hand. So you have power, financial power and she has power when it comes to the children." Cecile's awareness extends to knowing when she is ready to violate her own principles in mediation: "There is that temptation to say, Oh for God's sake let me tell you how you are going to do it."

The temptation to succumb is similar to the dilemma found in the dual roles filled by a mediator who is also a counselor. When is therapy appropriate and when is it not? The decision to break from the negotiating mode to the counseling mode, for Cecile, is a conscious choice made not only for the good of the client but to facilitate negotiations. When speaking of a client who had three children by three fathers and faced with another divorce, Cecile concludes "Then just that acceptance [of the client] seems to generate change in them and suddenly they do make the change from being angry to suddenly dealing with the task at hand."

Cecile uses her observation skills from the moment she greets her clients: "Sometimes I think this is going to be a difficult session, where you get somebody standing by the elevator, and not even coming into the waiting room because the wife is there." By the time I've walked to my office after a conversation about the weather or something else, I have a pretty good idea where the session will go." Many of these skills are based upon her counselling experience, ingrained to the point of physiognomic knowing (McConville, 1979): [When I] "feel tension in the air, I feel there's a lot of stress in the room. It's a gut feeling."

Cecile has an openness about herself which, while it does not invite intimacy, does encourage the idea that she gives something of herself to the session and the clients. She says she does not mind being asked if she has been divorced, or how the divorce affected her children because she thinks people need the reassurance, and it helps her to connect with her clients. Cecile is also genuine about liking clients who are educated and middle class.

A great deal of Cecile's discussion centered on the concept of empathy: "If you're able to get beyond, she's a bitch, to she's really hurting, she's feeling let down, she's feeling abandoned . . . and just acknowledging you've really been hurt and 'you're really feeling let down, aren't you?' And you know that you've connected with that person and they feel understood." Talking about the hurt, anger and sometimes hostile behavior she has experienced from a client Cecile says, "You've got to have empathy for a person and to know what it must feel like to be in their shoes." Similarly, Cecile is able to understand the partner's point of view: "from his perspective here, he is connected up with this lady who has low self-

esteem. . . ." When each person feels understood she is able to encourage the clients to begin movement in mediation.

Cecile described a session in which she felt she was working too hard, and the clients were not contributing to the process: "It's like trying to step out of yourself and sort of observe what you are doing. Most of the time I have found that I'm working and these people aren't." Cecile says that she stands beside herself rather than above the group when engaging in an analytical overview of the session. Cecile's enjoyment of analysis and problem solving is evident. She separates herself from other peoples' emotions, commenting, "I think I can deal with a lot of hostility and a lot of anger without it affecting me personally." The separation enables her to look at the problems objectively, and to help create individual solutions that are motivated by the best interests of children and by growth towards a positive acceptance of the divorce by her clients.

Table # 3B

Higher order thematic descriptions of Bill's mediation experience.

Thematic clusters		
1. Professional Orientation	(a) Issues of professionalism from table 5 (2, 3, 5, 10, 11, 12, 23, 34, 56, 57, 77).	Divorce lawyers– perceived lack of status complicated by expectations of partners, often unspoken, to contribute to the firm and help friends and important clients by not charging for work. Most files settled. Proud of achievements. Committed to mediation, task oriented, concerned about the future of mediation.
	(b) Recognition of professional limits (13, 35, 36, 39, 44, 52, 69, 79).	Difficulty for divorce lawyer, not to be perceived settler. Feels responsible for process, committed to goals. Recognizes some people prefer imposed settlement. Feels judicial decisions risky but client responsible for decision whether or not to mediate. Clients responsibility to want their own settlement.
	(c) Professional recognition that mediation goal directed (26, 58, 80).	Curbs clients excessive emotional expression but committed to idea of expedient individual agreements.
	(d) Model of professional mediator (47, 48, 50).	Theorizes ideal qualities in mediator being human, approachable, calm and vulnerable.
	(f) Personal satisfaction with work (23, 56).	Finds satisfaction working as divorce lawyer from competence and reputation. Satisfaction as mediator from agreements that are suited to the people involved.
2. Motivation (1, 14, 15, 22, 41)	Motivated by desire to succeed and be first in all areas related to family law and social reform. Implied interest in social issues. Related financial interest in field.	
3. Change in World View (42, 46)	Committed to mediation principles after being exposed t othe field. Understanding that people have hidden agenda's changed Bill's ideas about the possibility of an outsider understanding enough to adjudicate agreements.	

4. Belief and value System (45, 66, 68, 71, 78)	Questions the integrity of lawyers who use mediation duplicitously. Aware that bias is towards best interest of children and will not willingly seperate siblings. End goal is based on ideal of humaneness.	
5. Counselor Qualities	(a) Self awareness (6, 7., 9. 18, 22, 24, 30, 40, 41, 6, 68, 81, 85).	Awareness of psychological stress of family law, unappreciated by partners and pressure of expectation to win. Recognition of need for contact with people and enjoyment of new ideas. Aware that power imbalanced in legal situation. Self reflective, ambiguous about some aspects of self perceived to be taken advantage of. Sees self as creative, empathic, aware of biases, and insightful into human nature.
	(b) Empathy (29, 55, 60, 62, 67, 70).	Wants to help people and willing to take time to help them. Understands women's fear of male mediator as power imbalance. Puts self in others shoes and talks abut the fears of parents from position of knowing. recognizes need to understand truth from clients perspective.
	(c) Attitude towards clients respectful (8, 21, 74).	Recognizes that people under stress, willing to accord respect, enjoys more equal relationship with clients. Takes care to communicate on equal level so client understands and does not feel subordinate to the law or the lawyer.
	(d) Polycentric empathy (76).	Able to understand each persons point of view.
	(e) Views people as capable (32, 37, 38).	Personal pressure less since responsibility rests with clients capable to negotiate agreements more suited to their needs. If mediation fails, also responsibility of clients.
	(f) Therapeutic orientation (59).	Enjoys making creative suggestions in order to help client.
	(g) Enjoys working with people (16, 17, 20).	Enjoys clients, especially well educated and affluent, because they provide variety to situations that are similar.
	(h) Comfortable with emotion (19, 75).	
	(i) Open to experience (82)	Recognizes need and willing to learn new skills to improve self.
	(j) Communicator (72).	Uses observation skills to enhance understanding and improve communication.
	(k) Genuine (73, 83).	Willing to allow self to be known by clients.

6. Enjoyment of analysis an problem solving (31, 54, 63, 64).	Enjoys mediation because of mental involvement required to understand and not be *sucked in*, feels mind alive when working on two levels (emotional and legal). Enjoys creative mentally stimulating solutions to problems.	Looks beyond obvious issues to determine balance between truths, to discover if clients ready to mediate. Main interest is emotional process of change. Objective and analytical.

NOTE: Higher order thematic descriptions extracted from two levels of abstraction in Table 5. The numbers in parentheses refer to Bill's verbal reflections and experience in column one.

Bill

Bill is a lawyer mediator with thirteen years at the bar and four years experience as a divorce mediator. He carries, on average, one or two mediation cases a month. Bill depends on a large volume of increasingly more significant divorce cases for the bulk of his practice. During our initial interview, Bill was unhappy and frustrated with his place in a large firm and spent some time discussing the problems of a divorce lawyer in a large firm. The second interview found Bill settled into a new firm where we discussed mediation at greater length.

In reference to his professional role, Bill felt that divorce lawyers in general are not given the regard accorded to a "real litigator". This feeling is not unique to Bill. Cooke (1983) observes that family law cases are regarded as being beneath most attorneys and that a family lawyer lacks the status accorded to his peers in other branches of the law. Bill explained that the lack of status that he perceived was complicated by partners expecting cut-rate or free work for family and important clients, thereby placing his billings at a further disadvantage. Paradoxically, partners would then complain about his billings. Bill emphasized the critical role finances play in a partnership when he says, "So there you have a practitioner in the big firm who must defend his position, or justify his position as a viable economic unit, and the area of law being litigated generally is known to have a negative area." Bill has aggressively pursued a large clientele and carefully built a reputation as an expert in family law. Most of Bill's referrals now come from other lawyers who have watched the zeal with which he has become involved with his field and noted the results of his work. He is proud of the quality of his work and of his reputation. Bill is determined to make family law a paying proposition rather

than a loss leader for a large firm. He is dedicated to this end and his interest in mediation stemmed from pragmatic interest.

Bill "likes to be up-front, seeing what's happening and what's new." His involvement with mediation began because it was a new approach to his field which he thought could provide an advantage in his field. A second reason for his interest was a liking for "the way that matrimonial law keeps me at the cutting edge of social reforms." His interest in new ideas and alertness to information that might give him an edge as a divorce lawyer resulted in his vigorous participation in divorce mediation. Bill "sold the mediation idea" to his partners as an opportunity to take advantage of a new wave, likening mental health professionals to accountants which raised the specter of a previous blow to lawyers when accountants lifted lucrative tax clients from the legal profession by quiet infiltration.

Bill attended a mediation training workshop given by John Haynes and became intrigued with the idea that clients could negotiate their own agreements, facilitated by a neutral third party, with the purpose of lessening the impact of divorce on the participants and their family. He began "to sense that the legal process is not well equipped to address human problems." Reflections on divorce mediation brought him to the conclusion that "mediation is a humane response to a human problem" rather than being necessarily a legal issue. As he began to mediate he found that "the thing that's been most important to these people wasn't what I thought it was from a legal perspective . . . and certainly no judge would have twigged to it." He began to realize the possibilities that divorce mediation held for people based on humanitarian values enabling individual solutions that would most benefit the family. Bill remains firm in his commitment to the principles and to the

process of divorce mediation. It is his opinion that the Alberta mediation society could use a "strong male voice" to further its goals, and is willing to work as a leader in part from his commitment to the mediation ideal, and in part for his personal benefit. He notes his concern about the future of mediation because despite publicity, the number of mediation clients has not risen.

As a divorce lawyer Bill is faced with the dilemma of having to settle 90% of his cases while not being perceived as a settler which would dilute his effectiveness in court. As a mediator he is limited by clients who would prefer adjudicated settlements and would not consider mediation. He recognizes that not all people are suited to mediation and that some will fail, even though he feels responsible for the process.

Bill is "much less empathic in the sense of letting my clients go and vent their spleen." He is always aware that the goal of mediation is for clients to "impose a regime of settlement on themselves that is a custom fit, is workable for them and is liable to have a long shelf life". Bill controls the process by using his "personality to wield some control and some power" in order to proceed with negotiations. His opinion that, if the mediator fails to control the process "you've got . . . little more than a therapist . . . listen and bleed" displays a lack of interdisciplinary awareness about the therapy process and inadvertently displays a subjective evaluation of psychotherapy similar to others of his profession.

On the other hand, using Haynes as a model, Bill is clear about the qualities of an effective mediator that he thinks are important. He considers Haynes to be human, approachable, calm and vulnerable but not infallible. He comments that Haynes "will let you go a long mile before he reigns you in", seemingly unaware of

the discrepancy between this statement and his previous stance of "not allowing clients to vent their spleen for too long." However, Bill is aware that in some respects he brings a different temperament to mediation. He is rueful when he wonders how "you keep your cheeks from going red?"

Bill finds satisfaction in his divorce work from his competence and rising reputation as a lawyer's lawyer. His major satisfaction from mediation is that agreements are suited to the people involved and provide a more humanitarian alternative to the adversarial method of divorce. He finds satisfaction in that it's "very liberating and everything, notwithstanding that's it's a lot of work and you have to be more committed to the process than the parties are probably."

This commitment applies to the legal profession's questionable use of the mediation system to gain time or try to obtain a more generous settlement in some way for their client. Bill's value system and his commitment to mediation make him question the integrity of lawyers who use mediation duplicitously. He is frank in his opinion when he says, "Some lawyers prostitute the mediation process in paying lip service to it, and I think that's intellectual dishonesty." Bill's values include an adherence to the global best interest of the child doctrine. He makes suggestions based on this bias and will not "willingly allow siblings to be separated" based on the same values. Bill's satisfaction from mediation springs from a deeply held belief that it is important to hold to humanistic values.

Bill has a high level of self awareness on many topics. He is cognizant of the psychological stress placed on him by the often unspoken, conflicting expectations of partners and the resentment towards him by clients who are placed in a subservient position by need. He ventures the opinion that these stressors are

compounded by the expectation that he always win. He is aware that power is imbalanced in a legal situation in that the lawyer is the person in power: "They really do need you." Bill is somewhat uncomfortable with the notion that: "I am absolutely essential to his well being, to his carrying on, and his success. So I've got to damn well be right." He is ambiguous about the qualities that he feels allow others to take advantage of him forcing Bill to "overextend myself spend too much time not be as efficient as I might." He sees himself as creative, empathic, sympathetic, aware of biases and insightful into human nature.

Throughout the data, a caring about people emerges strongly. Bill enjoys people and the variety they bring to family law: "The fact is I like it in a funny kind of way. . . I like the person to person contact." He is forthright about his caring for people and maintains "I want to help and I will take the time." He is sensitive to the concern of women in mediation that a husband will influence the mediator. He recognizes the emotional tone of clients and is comfortable with expressed emotion. He talks about putting himself in another's shoes to understand a case with which he was especially pleased. Bill talks about fears parents face from a personal perspective when theorizing about the best interests of the children should his own marriage dissolve, that indicates his genuineness, understanding, and empathy. Similarly he understands that the truth of the perceiver is not necessarily the absolute truth. In a vivid custody example he explains that "regardless whether the fears were justified (of children for their father), and they were not, they were real."

Bill reveals his respect for his clients with the idea that people are under stress and "six months either way of the dispute these people are probably very nice people." His satisfaction with mediation stems from a position of equality with his

clients in which he recognizes that the liberation that he feels is due to the clients taking responsibility for their agreement. To feel liberated by mediation signifies that Bill views people as being capable to negotiate settlements more suited to their needs. On a continuation of this theme, Bill also feels that if mediation fails, the clients assume responsibility.

One of Bill's charms is his willingness to be known, and his sense of congruence about who he is. He is genuine about his ambition and about who he thinks he is. In counseling, to have clients let down barriers the mediator or counselor must be willing to be known past their own barrier. Musing about his success at mediation he observes that "you have to have a personality that is malleable enough that you can get into individuals and let down some of the barriers."

Bill uses the observation skills he has developed to enhance understanding and improve communication. He naturally thinks in metaphors and encourages his clients to use metaphors so that he can get a "flavor" of what they are thinking. During these times he is also monitoring the reactions of his clients. The constant monitoring forces him to evaluate on one level while staying engaged with his clients. Bill finds this dimension missing in law, and considers the change exciting. He says that "it keeps my mind alive . . . you're taking sensor readings all the time about what's happening here." He values the mental stimulation and enjoys the evaluation process. He is aware that apart from mental stimulation he must keep himself in an objective stance. As an example he seldom imposes his views about what is in the best interest of the child on his clients, maintaining that

"as a professional you really have to subvert those kinds of feelings to represent your client's best interest" on a divorce file, it's like thinking on a different plane."

Bill's reputation as an effective mediator is likely based on the strong belief he has in himself and on the caring about people that emerges in the data. The way he views mediation is pivotal. Although his motivation to mediate was prompted by a wish "to see what's new" and to tap a source of new clients, Bill says "I am committed to it [the mediation process]. . . you have to be more committed to the process than the parties are probably." Bill's effectiveness likely relies on his belief in the humanitarian aspect of the mediation process, his enjoyment, and his caring about people.

Table # 4B

Higher order thematic descriptions of Pam's mediation experience.

Thematic clusters		
1. Professional Orientation	(a) Professional role (36, 50, 55, 59, 71, 87, 1, 2, 3, 4, 26, 28, 29, 30, 34, 35, 78(.	Ambivalent feelings about divorce work forced re-appraisal and re-commitment. Aware of stigma attached to divorce work, professional concern about income. Mediation professional challenge, uncomfortable with emotional tone. Makes professional referrals if one person has consulted her as attorney. Feels obligation to canvas partners abut re-conciliation. Feels responsible for rapid resolution of mediation. Feels competent with money and property issues. Refers custody cases to a psychologist as a professional duty, perceives self to be less competent in custody. Uses theory from workshops to guide mediation.
	(b) Recognition that mediation goal directed (20, 21, 42, 92, 66).	Aware that a failed mediation can still be termed successful if couple experiences persona growth. Acknowledges feelings in order to facilitate mediation process. Successful mediation, signed agreement uncomfortable if the therapeutic goal not addressed. Believes mediator should be task directive and make suggestions for resolution of the dispute. Failure, unsigned agreement.
	(c) Recognition of professional limitations (18, 47, 48, 84).	Recognition that not all people suitable for mediation. Negotiations doomed if clients or lawyer not motivated to mediate.
	(d) Professional satisfaction (4, 9, 12, 27, 64, 80, 86).	Finds divorce practise satisfying because it meets need for social contact. Finds personal service vested in her practise nurtures satisfaction. Professional pride incompetence. Satisfaction in some cases where agreement not signed but clients experienced personal growth. Finds satisfaction when mediation productive, meets therapeutic end goal and is long lasting. Finds satisfaction in small achievements.
	(e) Model of ideal mediator (91, 92, 93).	Feels mediator including self should be good communicator, patient, trustworthy, and possess counselor skills based on Knowledge, be a genuine and open person. Also should be objective task oriented and directive to some degree. Should understand each persons point of view and balance the two.

2. Motivation	(a) Best interests of children (60, 95).	Wants child issues settled so that children cared for before money issues discussed. Uncomfortable when divorce clients use lawyers to exercise power using the children as pawns.
	(b) Therapeutic orientation (54, 63, 64, 65, 66, 80, 86).	Satisfaction when client show sign of personal growth. Believes growth empowers clients. Dissatisfied if underlying issues not resolved and clients do not grow from mediation. More honest communication between clients seen as positive.
3.Value System	(a) Social conscience (7, 8, 9, 14, 52, *53, 54, 75) – Primary motivation.	Responding to changing social needs, and desire to serve people motivation for divorce work. Strong belief in private ordering of marriage led to mediation. Belief people responsible for their own actions. Strong belief in the duty of the lawyer to serve.
	(b) Personal beliefs (56, 57, 59, 81, 94).	Values balance in life and time to be with family. Finds dealing with people personally meaningful. Willing to compromise mediator neutrality based on belief in fair settlements. Will not mediate if women ar judged to be too vulnerable. Will not tolerate clients who do not mediate in good faith. Involved in improving communication process in firm to benefit others as well as self. Believes strongly in mediation of all kinds as an important societal device to global cooperation.
	(c) Professional beliefs (83).	Sees lawyers who use mediation for manipulative purposes as intellectually and morally dishonest.
4. Change in World View (74)	Experience with disharmony between values of law, e.g. financial and ambition to succeed disconnected her from the person she felt that she had been. Decision to continue to practise law and to mediate based on values of service to people, duty of lawyer to serve. Mediation method to adhere to those values in socially meaningful sense.	
5. Counselor Qualities	(a) Polycentric empathy (31, 46, 93).	Aware of need to understand each partners point of view and balance attention between clients Finds balance difficult to achieve.

	(b) Empathy (15, 39, 41, 45, 56, 68)	Understanding combined with need to be objective. Understands tears but uncomfortable with emotion but aware that emotions such as anger must be understood. Tries to let client know that she hears both the message and he emotion. Sensitive to the self-image of vulnerable clients. Recognizes the power of being understood and enjoys the rapport it produces with clients.
	(c) Views clients as capable (5, 16, 47, 54, 76, 90).	Views clients as bright capable human beings. Enjoys clients who do not want to use legal system and has an ability to handle the issues. Thinks law making people responsible for themselves gives power to clients. Believes people responsible for their own actions. Will get involved in mediation only when she sees that the couple needs help.
	(d) Self awareness (10, 13, 40, 43, 49, 67, 69, 89).	Recognition that divorce work serves here purposes for the time being. Recognizes need to please others, e.g. clients and judges. Aware that at times she has difficulty maintaining objectivity. Recognition that clients testing her in the first mediation session. Relies on observational skills and senses to guide intuition. Likes to be aware of what she is thinking. always in process of self-evaluation.
	(e) Open to new experience (88).	Willing to learn.
	(f) Non judgmental (77).	Acts for people with varying values. Must be willing to take legal advice.
	(g) Genuine.	
6. Enjoyment of analysis and problem solving (6, 19, 22, 23, 43, 48).		Enjoys mental stimulation of court work. Able to see beyond surface issues. Able to analyze but finds emotions mask message.

NOTE: Higher order thematic descriptions extracted from two levels of abstraction in Table 7. The numbers in parentheses refer to Pam's verbal reflections and experience in column one.

Pam

Pam is a divorce attorney with 13 years at the bar. Her reputation as an effective, experienced mediator is based on between three and four years practical experience gained after she attended a mediation workshop in the United States conducted by John Haynes. Pam averages approximately two mediation cases per month, often co-mediated with a mental health professional in cases where custody is the major concern of the disputing parents.

Recently, ambivalent feelings about divorce work forced Pam to re-examine her career resulting in a re-commitment to her own goal of helping people by providing a personal approach to their divorce. Worries about being able to "pull her weight" within her firm with regard to finances, plus an additional worry about the proportion of billings that she will receive, helped to precipitate a re-appraisal of her professional role. The income she is able to generate in practice is comparatively less than her partners in more ulcerative areas. It is a concern reflected by her comment that "we're coming up to our night of the long knives next week." Pam is aware of the lesser status accorded to divorce lawyers by their peers, but enjoys the daily contact with people absent in other areas of law, and the feelings of competence she has developed as she becomes a leader in her field. Pam's re-dedication to her craft, for these reasons, include mediation as a useful, but not all encompassing alternative to dispute resolution.

During our first interview, Pam reflected on herself as a divorce lawyer and as a mediator in general terms using few examples. She used more examples in order to generalize her experiences in the second interview, beginning or ending

with an analysis of the insight gained from the experience. Hence, the most clearly expressed synthesis of her accumulated knowledge often emerges in generalities.

Pam finds divorce mediation to be a professional challenge although she is often uncomfortable with the emotional tone of the sessions. She places a high emphasis on professional conduct illustrated by her willingness to co-mediate issues where she feels less comfortable, and to refer clients for mediation who initially consulted Pam in her capacity as a divorce lawyer. She canvasses her clients about the possibilities of re-conciliation, and makes them aware of the possibilities in mediation as an obligation to the divorce act and to her profession. Pam's strong sense of responsibility to keep the cost to the client as low as possible, impels her to try to complete mediation as quickly and efficiently as possible. Pam prefers to mediate cases where her expertise is most useful, namely financial and property issues. She is conscious of and conscientiously tries to use the theory that she learned in workshops to guide her mediation.

Pam's sense of obligation enhances the task orientation in mediation. She believes the mediator should be active and should participate in generating solutions to problems that might enhance the mediation process. Although she perceives herself to be empathic, she uses counseling techniques such as acknowledging feelings in order to facilitate the process. Pam's definition of failure is an unsigned agreement, although she is pleased when personal growth results from mediation, even those technically termed failures. Of one failed experience where personal growth occurred, Pam said "I've had feedback from both my clients in response to my request that they pay my bill, that they were totally happy. It was a wonderful experience."

Pam says that she recognizes that "only a small portion of the population will benefit" from mediation. Her opinion is reflected in the contention that these people must be capable and willing to negotiate with their former spouse. An example she gave was when she recalls realizing that "although the husband appeared to be holding the power and be the one who was undermining the process, the wife just wasn't ready to agree to anything." Pam is alert to the possibility that one of the partners may be represented by a lawyer who does not understand or believe in the mediation concept and then the process is, as she remarks, "doomed to failure."

Pam derives a great deal of satisfaction from her work as a divorce lawyer and as a divorce mediator. Social contact, and the opportunity to provide personalized service nurtures a sense of satisfaction in her family practice. She notes that it's "the social end of the practice that's fairly satisfying." Pam receives personal satisfaction from her feelings of professional competence in both family law and divorce mediation. Mediation is especially rewarding for Pam when mediation has been productive, meets a therapeutic end goal and is long lasting. She is able to take pride in small achievements in mediation, saying that it "is so nice to go home with a smile at the end of the day, when people have worked productively towards an agreement."

Pam reflects that in her opinion, a good mediator should be a "good communicator, able to listen well and be responsive to what is being said, . . . be patient, and be able to pickup on feelings in the room and show that they understand." She feels that a mediator should be task oriented, objective and to some degree directive, willing to be genuine and have some counseling skills. Lack

of consistent practice has led Pam to feel unsure of her counselor skills. She is open about her uncertainty, which is in itself a counselor quality, when she says "maybe a psychologist might be better in the situation, I don't know."

Pam is forthright about her discomfort in highly emotional situations. She admits that "the thing that gets me is tears . . . You know that they're hurt and that gets to me." She finds that the open expression of tears or hostility makes her so uncomfortable that she prefers to mediate only financial issues. In order to mediate an agreement that will be in the best interests of children, she often co-mediates with a mental health professional because "they tap resources in the client I didn't know existed." She thinks that child care issues should be settled so that the parents can relax and focus on financial issues." One particular trend Pam finds personally repugnant is lawyers using children as pawns in the negotiating process of divorce.

Her satisfaction when a client shows signs of personal growth is genuine. Talking about one of her first client's, Pam was smiling at the end of her description:. "but it was so nice to be able to say, 'Ah, you've finally decided to take care of yourself' . . . She was experiencing what mediation was for. She was empowered by the process . . . and it was a very successful agreement because of her growth." Pam is uneasy when the underlying issues are resolved but the clients show no signs of personal growth: "I remember one particularly where it was very successful and done in a compressed way and I just hated it. But we got our deal, it was an underlying feeling, I'm not sure what it was." Although she does not express personal growth as a goal, it emerges from her comments.

For Pam, the primary motivation to mediate divorce cases springs from a firm conviction that marriage is a private affair and should result in a private rather than public or legal ordering of it's dissolution. She believes that people are responsible for their actions and are entitled to settle their own marital disputes. Her desire to mediate stems from a wish to respond to changing social needs and a desire to help people. Pam's desire to help people is re-enforced by her commitment to the ideal that it is a lawyers duty to serve the public.

Pam has considered her values. She values her family as well as her work and makes an effort to balance the two. Dealing with people holds personal meaning. She is willing to compromise mediator neutrality if she perceives a power imbalance, and will not refer clients that do not seem to have enough self-esteem to negotiate in their own best interests: "They don't believe they do [have the ability to negotiate]. And I don't refer those people." Pam will not tolerate clients who do not mediate in good faith and think that lawyers who manipulate opposing counsel by using the mediation system are "intellectually and morally dishonest." Pam is committed to mediation as a tool of peaceful resolution. She believes strongly in mediation of all kinds as an important societal device for global co-operation.

Pam's change in world-view came about as a result of the disharmony she perceived between the implicit values of lawyers interested in financial rewards and her own values. She felt disconnected from the person that she felt that she had been. Her decision to continue to practise family law and to mediate was based on her personal values of service to others and the duty of lawyers to serve the public. Mediation is one method by which Pam is able to adhere to those values in a socially and personally meaningful sense. Pam says that the main focus of her life

is her relationship with people. Pam spoke with assurance when she stated that "it is very very central in my life." As a mediator she is able to understand each person's point of view and balance her understanding between clients, a skill that she finds difficult but improving. Pam recounts a case in which the female partner in a marriage was unable to present a realistic budget because of her low self esteem and the difficulty balancing negotiations when the husband thought, "[and] he really did think [the budget] was perfect." Pam combines her ability to empathize with the need to be objective. She acknowledges an extreme discomfort with tears because "you just know that they [the clients] hurt, and that gets to me." However, Pam understands that emotions such as anger must be understood and she "tries to let the client know that she hears both the emotion and the message." She recognizes that the times when clients feel they have been understood have great power and enjoys the rapport it produces.

In spite of her concern about her own handling of others emotions, Pam views most of her clients as bright capable human beings. She likes to work with people who feel they do not need the legal process and are confident of their ability to handle the issues. Pam thinks that the law making people responsible for themselves empowers clients. She sees her role as mediator as a facilitator, and will only become active in the negotiations if the clients seem to need help. Her sense of urgency may impel her to become involved at an earlier stage than some other mediators, but her success implies that she and the clients understand each other.

Pam has a self-awareness that she says she has always used. She makes assessments of herself which are not always flattering but reflect who she is: "I

think I am responding to something in me that wants to please others [when talking about litigation]." She is aware that at times she has trouble maintaining her objectivity and struggles to control her empathic responses. Pam acknowledges that at times she has trouble separating the message from emotion; however, she says that "I experience it in the moment, but I force myself to draw back and get on with the task." She is very aware that in the first mediation session the clients are evaluating her abilities. Pam is sensitive to the fact that throughout her life, she has relied on her observational skills and her senses to guide her intuition: "I like to know what I'm feeling about various things that I'm doing." She elaborates that she: "is always critical of what I'm doing," a tendency that forces self awareness and which may have contributed to her feelings of being burned out. Counterbalancing her feelings of responsibility for the process with her willingness to cede responsibility for actions to her clients, may help to lessen the effect of unremitting self-assessment for Pam.

An openness to new experience, evinced by a willingness to learn, and a non-judgmental attitude seemed to have helped Pam's transition from divorce attorney to divorce mediator. Her relish for analysis and mental stimulation combined with insight, have sustained Pam's efforts even when the message is "a lot harder to pick out if it's delivered in a very emotional way." In reference to clients who were happy with her work but did not sign an agreement, her comment that "maybe they just don't want to conclude a deal" seems to imply that she is content to leave the choices made by her mediation clients to them.

Pam's reputation as an effective divorce mediator likely results from her caring for and about the people with whom she works, and the strong sense of

integrity that she displays. Although these qualities are based on the premise of a therapeutic goal and on the best interest of children doctrine, the emphasis on these emerges from the data in a more obscure way. Specifically, when Pam says: "where there are kids in issue and two people who seem to be saying good things about the other. . . I'll encourage them." A second example appears when Pam says: "She was experiencing what mediation was for. She was empowered by the process and it was a very engaged agreement, a very successful mediation because of her growth. So that was a good experience."

Pam recognizes that experience is a factor in successful mediation. She would like to increase her mediation practice for the experience: "We need more experience," and for the help it would give to families. Discussing a difficult contested divorce, she talks about power exhibited in the way people fight over small details. "China is petty, kids are not petty, and the exercise of power is devastating." It is apparent that Pam is committed to the goals of mediation from a social and personal standpoint and successfully translates the commitment to her clients.

Synthesis of shared qualities of divorce mediators

Heidegger (Packer, 1985) described three processes by which hermeneutics could describe practical activity. He outlined modes of involvement that people have with their surroundings. These are the ready-to-hand, the unready-at hand, and the present at hand, modes of engagement. The basic mode is the ready-to hand which describes practical projects in the world carried on in a global or wholistic sense, in that the parts of our activity are so ingrained in our being, that we have "no need for focal awareness of ourselves and our tools: Both become fused into the activity" (p. 1083). An illustration of the ready-to-hand mode of engagement is that of a person driving a car. When a problem occurs making us aware of the process and the interrelated skills required to drive the car, our performance deteriorates rapidly.

In the unready-to-hand mode, experience changes with the awareness that there is a problem related to our activity and we try to identify it's nature. Elements of the experience become more salient and stand out against the background of experience analagous to the figure ground structure found in the Gestalt school of visual experience.

The present-to-hand mode is experienced when an effort is made to detach from and analyze ongoing practical involvement in a specific project. The process of stepping back to analyze in order to solve the problem provides access to a theoretical phenomena which is separate and distinct from emotions, habitual practices and skills of the ready-to-hand mode of involvement.

Cognitive orientation

An examination of the data reveals that the most obvious quality shared by the four co-researchers has eluded experiential description. Each co-researcher displayed a tendency to be extremely cognitive about their life-world experience. When the data were examined for experiential description as opposed to a synthesis of observations, two distinct patterns occurred. The psychologists, more experienced in numbers of clients, had difficulty pin pointing examples of a particular kind of problem. The lawyers, when asked, were able to describe examples of problems, but not without some difficulty.

The ready-to-hand mode is the beginning point for hermeneutic inquiry. However, the present at hand mode is present when interviews are conducted because a reflective and disengaged attitude is needed for description. The purpose of inquiry is to reveal the ready-to-hand way of being in the world. Joe and Cecile's involvement with mediation is of longer standing and their experiences seem to have melded into a ready-to-hand-mode of involvement that makes particular descriptions especially difficult. Cecile, however, was able to generate generic examples based on experience more readily than Joe. Bill and Pam were able to give examples of their experiences more readily. Pam's comment that she feels encumbered by "my lack of training in the psychological area," coupled with Bill's remark about the importance of feelings being a "side trip" (indicating that he does not often take side trips), suggests that the lawyers may be operating in the unready-to-hand mode in the area of psychological expertise, thereby making examples easier to recall. However, both would slip into the present-to-hand stance

of description which is presumably made easier by long standing analytical activity. Similarly, the psychologists who spend their days in mental involvement with clients while maintaining an evaluative goal directed component were able to describe themes or types of clients, but were unable to readily identify salience with regard to individuals.

Motivation

The divorce mediators in this study all seemed to have very different personalities. Each arrived in the mediation field for individual reasons. Much of the motivation for the practioners to mediate is similar, so that shading of emphasis varies according to the individual. Joe developed a divorce mediation practice with the clear intention of helping children by helping their parents to say goodbye in the manner least harmful for the children. He pursued the additional goal of therapeutic acceptance of the divorce by the parents, not only as a positive step for the individuals, but as one which would ultimately generate a more peaceful environment for children to grow. Cecile found herself doing two kinds of therapy before she realized that one of the kinds had been called mediation. Her primary motivation for divorce mediation was her strong belief that people are capable of making their own decisions and by doing so they become psychologically empowered. Cecile adheres to the tenet of children's best interests; however, she feels children will be better served by parents who are capable of making decisions.

The two lawyers assigned higher importance to the ideals of individual rights. Pam agrees with the body of thought (Mnookin & Kornhauser, 1979) holding that marriage and divorce belong to a private rather than public ordering

before the law. A keenly felt commitment to and caring for people prompted her to embody the ideal of service to the community through the law. Bill arrived at his position of respected mediator via a road less traveled but one which is of concern to the legal community. He approached mediation from a stand point of personal gain. Bill reasoned that if he learned the new techniques, he would enhance his growing reputation and satisfy his need for new knowledge. It was after he began to learn more about the process and the values of divorce mediation that he "bought into the notion." It is probable that Bill bought into the notion because his natural attitude or way of being in the world is one of caring about people, particularly those who "cry in my office and I see them mad, and I catch colds from their kids."

Change in World-View

All of the practitioners experienced a change in world view which enabled them to orient to divorce mediation as a viable method of divorce dispute resolution. Joe could only endure openly hostile sessions when he "did it for the kids" Cecile experienced a gradual change in that she recognized that the goals of mediation and therapy were different. Pam was influenced in her professional life by a personal decision to live by ideals that would bring help to others and harmony to her own life. Bill experienced a conversion from a surface interest to a deep personal commitment to the humanity of divorce mediation. Each change enhanced the mediators' ability to be present to their clients in an open and genuine manner, engage the client's trust and to function effectively in their role as divorce mediator.

Counselor Qualities

The qualities that emerged consistently in all mediators were similar to the qualities outlined by Rogers (1961), elaborated by Soper (1963), and explicated by the Association for Counselor Education and Supervision (1964). Rogers posited that an effective counselor had to be an attractive, friendly person who inspired confidence and trust. Soper added the conditions that counselors must perceive their clients as capable, dependable, and trustworthy and must perceive themselves as nondominating and altruistic. The six qualities outlined by the Association for Counselor Education and Supervision are a belief in each individual, open-mindedness, commitment to human values, alertness to the world, open-mindedness, understanding of self, and professional commitment. The conditions conductive to therapy include the ideal qualities held by counselors, which enable and enhance therapy where the goal is personal awareness and personal growth. In divorce, the disputant must first accept the divorce before personal growth can begin. When the divorce is not accepted as being necessary, the probability of a contested divorce is much higher (Brown, 1982).

All co-researchers approached divorce mediation as a viable method of dispute resolution because of the emphasis on a therapeutic end goal or on the children's best interest. These goals may not have been the primary motivation for the lawyers, but were present in the humanitarian orientation exhibited by each. From this perspective, counselor qualities would be expected in effective mediators, and were found.

Empathy requires one to enter the world-view of clients (Ivey et al., 1987), or as Bill and Cecile explained "to walk in their shoes." An elementary

approximation of empathy may be achieved through an effective use of attending behaviors and the attending skills. There are two levels of empathy. Advanced accurate empathy requires that counselors give more of themselves and may include attempts to directly influence the client. Primary empathy influences behavior in more subtle ways by giving feedback, suggestions, interpretation, logical consequences and by using an influencing summary, as well as using attending skills (Ivey et al., 1987). Divorce mediation is usually conducted with both disputants present, which calls for an understanding of each person's point of view. In addition, mediators need to remember the cultural and historical perspective they bring to the session as well as those brought by both clients. All co-researchers displayed not only unidirectional empathy, but also an ability to understand the viewpoint of both parties, or polycentric empathy. Cecile specified that not only should the parties be understood, but that the understanding should be explicated in order to facilitate the mediation process.

To be truly empathic and attending with clients, the counselor must be able to grow personally (Ivey et al., 1987). One of the conditions for personal growth according to Maslow (1954), is an openness to experience. Mediation was a new experience for all four individuals who worked at the process in order to learn and practice their new skills and therefore demonstrate an openness to experience. Talking about an unsuccessful mediation, Pam reflected that it had carried an impact because it had been "such a valuable learning experience." She demonstrated a willingness to learn more thereby maintaining a continued openness to experience. The habit of looking at people as individuals and a wish to learn their world is an openness to experience also shared by all mediators.

Regardless of background, all of the divorce mediators viewed their clients with respect and as capable of making decisions. This belief formed the foundation of Cecile's approach to mediation. Pam's statement that people are responsible for their own actions was very strong. Bill observed that "I haven't seen a couple yet that are not more capable than I or a judge of working out something that's going to be functional for them." Joe refuses to take credit for a successful agreement or blame for an unsuccessful agreement, although he enjoys sessions where he feels that his facilitation has been helpful to the clients.

Similarly, all mediators exhibited a nonjudgemental attitude towards clients in all but two areas. None of these professionals would mediate an agreement which would disadvantage an abused spouse, nor would they willingly jeopardize the best interests of the children. All cited their own value system as the basis for making a decision about whether to continue to mediate. Often the decision to mediate in good faith depends upon the integrity of the mediator. Joe justified his decision to allow an agreement that separated siblings on gender lines by pointing to the fact that things are better now than they were for the family. He ensured a second opportunity to unite the children by qualifying the separation as a temporary step written into the agreement and subject to a specified review. The case cited by Bill where a similar separation of sibling took place, hinged on his judgement that the discord in the household was longstanding and not expected to change. Bill acknowledged that although the terms were not ideal, the children, as in Joe's case, would be happier than previously. It was only after some self-examination that he concluded the agreement.

Each divorce mediator works with a high degree of self-awareness and personal congruence. Each was aware how values influenced thinking. All revealed at least one attribute that might be considered undesirable, but maintained an honesty congruent with their self-knowledge: Pam knows that she has a need to please others, Bill is open about his reasons for becoming a divorce lawyer and mediator, Joe acknowledges that his concern for children stems from his own childhood which might influence his thinking, and Cecile knows that she becomes impatient with the process and would like to say "Oh, for God's sake . . . 'Let me tell you how you're going to do it.'"

Professional orientation

A noticeable attribute of the co-researchers was a high degree of commitment to their individual professions, and to the goals of mediation. Professionalism emerged in comments such as the one made by Joe that the test of a professional's attitude is "the way they talk about their cases when they are away from their office." Cecile often integrated her observations with research from professional literature. Pam talks of her divorce work as a commitment, and Bill voices concern that divorce mediation is not gathering momentum. The four also recognize that many people are not suited to mediation, and are realistic that not all cases of divorce mediation will be successful. Despite problems, each finds mediation a professionally and personally satisfying experience; a satisfaction that appears to come from having helped others. Although the motives to mediate are different, satisfaction for each mediator arises when clients exhibit some evidence of personal growth or when children of divorcing families benefit.

Enjoyment of Analysis and Problem solving

A common enjoyment of mental involvement and stimulation was noted in all co-researchers. Bill found satisfaction in the concentration and mental activity involved with understanding each client. He said that his mind "came alive" when working on two levels, emotional and problem solving. The distinction between pure analysis required by people who solve problems based on written work, which admittedly may be a distillation of peoples experience, and the pressure of guiding people to problem solve in an emotionally laden atmosphere, is of interest in that it implies a perception that the latter is more critical to the participants. In a comment made after the tape stopped, Bill allowed that he found it difficult to maintain eye contact with his clients and an interest in their divorce cases after he had the information needed and a plan formulated. His experience as an expert divorce lawyer and team leader made his experience of divorce law fall into the ready-to-hand mode of engagement, an experience that he contends is quite different from his role as mediator. It would be unwise to label the enjoyment of mental activity and analysis as a lawyer characteristic since both professions use these abilities extensively. Psychologists are taught to assess clients in order to bring about change in an interactive setting. Similarly lawyers use their analytical abilities daily. Hochberg and Kressel (1983), maintains that by virtue of their advice-giving role, lawyers expect their advice to be heeded. The interactive setting of the court is slightly different than a session with clients, in that there are certain forms to be observed and questions that can be anticipated. In a mediation session the self-determination of the clients is compromised when a lawyer (or mediator), assumes the role of advice giver (Irving, 1980).

Distinctions Found Between Divorce Mediators

Some differences along gender lines were anticipated in this study. Differences were found in the degree of similarity rather than complete divergence, with the degree of similarity being divided by profession rather than gender. Even though the lawyers thought their clients to be capable, they felt a greater responsibility to move quickly to agreement than did the psychologists. Pam says that she feels "a very strong obligation to as quickly as I can, answer their questions. I'm just firing the stuff up on the board." Bill comments that "I've got enough of a balance now to say, here's what I need you to do, and here's why, and here's what you need to know, and here's what I want you to do." The psychologists at times assume responsibility for the agreement, but with an awareness that it is a mistake. Joe is rueful about being forced to take more responsibility than he should at times, because he knows that a directed agreement stands less chance of being followed. Cecile notes that when she gets tired it is because she is the one who is working "and they're the ones on the sidelines." It may be that the lawyers' sense of responsibility stems from a feeling that their time is more valuable. Joe's charges are at par with lawyers so that the clients will value his input as they would any other professional. He says that at times responsibility seems to be forced on him, but that from a therapeutic point of view, responsibility must rest with the clients.

The difference apparently separating the two professions is the degree of orientation to the therapeutic end goal. This goal is acknowledged by all, but the lawyers place more emphasis on social ideals evinced by Pam's wish to enable a private ordering of marriage, and Bill's declaration of humanitarian ideals for a

solution to human problems as a less destructive alternative to current adversarial methods. In contrast, the psychologists placed more emphasis on child related issues and emotional acceptance of the divorce by the parting couple.

The degree of psychological skill held by each mediator varied with experience. Pam is uncertain of the level of her skills. She feels that she has not been able to practise those skills enough. One of Bill's most satisfying cases called for a degree of thought and psychological skill that he apparently had not previously used, since the resolution of this case is memorable to him because of his ability to understand the people and their reasoning. However, the lawyers willingness to learn new skills, and their efforts to integrate the skills into their practice has led to success in divorce mediation. Ivey et al. (1987) notes that number of researchers have found that first level attending behavior and skills are relatively easy to teach and are extremely successful techniques that enhance effectiveness in all aspects of life for the recipients. Mediation does not include therapy, merely the recognition of the need for therapy so that the required level of psychological skills need not be those of a therapist. Following Irving and Benjamin's (1987) reasoning, the skills must be sufficient for the mediator to understand the world-view of clients in order to facilitate a fair agreement which will be in the best interests of children, and will encourage personal growth for the clients. Riskin (1982) interprets the issue of psychological skills when he comments "a like sensitivity is essential for good lawyering as well, but it occupies a more prominent place on the list of skills required for a mediator" (p.36).

Concerns expressed by the legal profession regarding non-lawyers offering legal advice appears to be unfounded in the case of the participants of this study.

Cecile is emphatic about the delineation of roles. She encourages clients to check with their lawyers if any part of an agreement is troublesome. She encourages frequent contact with lawyers to facilitate the process of mediation and furthermore, will not mediate an agreement that she perceives to be detrimental to one client. Joe holds case conferences with all parties present, including the lawyers, so that all know the ground rules, the purpose of the mediation, and that access to legal advice is encouraged. The obligation held by all liscenced psychologists under their code of ethics, is to practice only in areas of competence. The high degree of professionalism found in these individuals makes it unlikely that legal advice, per se, would be given.

Conclusion

Themes that emerged from the data varied in emphasis but were found to be consistent in the experience of the co-researchers. Participants approached a discussion of their work in a manner that suggests a cognitive style of experiencing their world. In addition, all mediators exhibited an enjoyment of intellectual and emotional problem solving. Motivation for both lawyers and psychologists to mediate encompassed individual rights, children's best interest and emotional acceptance of the divorce by clients. Generally, the lawyers tended to emphasize human rights and the psychologists emphasize children's best interests and client's emotional acceptance of the divorce.

All co-researchers demonstrated a high degree of professionalism and a commitment to their profession and the principles and practice of divorce mediation. These ideals are based on a value and belief system that also prohibited mediators

from entering into negotiations where a chronic imbalance of power or abuse by a spouse was perceived. Counselor qualities emerged in every instance, particularly with regard to empathy and an open and genuine way of being in the world. A change in world-view had occurred for each co-researcher. In every case, it enabled the practioner to function more effectively as a divorce mediator. Of special significance is the change in world-view for one of the lawyers from mediation as a method to increase personal reputation and, in part, financial gain, to a true belief in mediation as a humane solution to a human problem. The significance of these findings are discussed further in chapter five.

Chapter 5

General Discussion

The concluding chapter discusses methodological considerations and limitations of the study as it evolved. Issues relating to mediation, from the legal perspective, future direction for divorce mediators, especially in regard to education, are highlighted. Contributions of this study and implications for future research are considered.

Methodological Considerations

Phenomenological research is always a beginning. Often it reveals what we didn't know we knew, so that when the revelation appears there is a tendency to think "I knew that." Others with different questions may examine the data and find another map. In this study, the question "what are the shared qualities of divorce mediators?" revealed significant similarities based on the experience of the individual co-researchers. The similarities that emerged from the data must now be replicated or built upon.

Limitations of This Study

Phenomenological research searches for examples of the phenomenon as they are lived rather than as they are theorized about (Salner, 1986). Each of the co-researchers in this study had difficulty not theorizing about an area of great interest to us both. I have tried to use language that clearly delimits experience from opinion. One difficulty is that examples of lived experience would often be

preceded by or summarized in a theoretical fashion. For all that theorizing in part obstructed method, the consistency with which this happened led to the conclusion that a meta cognitive approach is a quality shared by effective divorce mediators. Implications of a meta cognitive approach might be that it is important for divorce mediators to protect their feelings by an objective approach, much as psychologists are taught, in order that the client may benefit. Since the researcher was looking for underlying qualities rather than an explication of lived experience, the data was considered useful to illuminate qualities co-researchers revealed in all discussions about divorce mediation.

Mediation and Relevant Legal Issues

The appeal of mediation is apparent in the words of Gandhi, Indian lawyer and political leader, whose strength lay in his willingness to compromise.

> I had learnt the true practice of the law. I had learnt to find out the better side of human nature and to enter men's hearts. I had realized that the true function of a lawyer was to unite parties riven asunder. The lesson was so indelibly burnt into me that a large part of my time during the twenty years of my practice as a lawyer was occupied in bringing about private compromises of hundreds of cases. I lost nothing thereby- not even money; certainly not my soul.
>
> Gandhi, (Blades, 1984, p. 59).

The future of divorce mediation is still unclear (Silberman, 1982). Bill worries that the mediation movement may have peaked. Irving and Benjamin (1987) note that the number of publicly funded mediators throughout Canada has remained constant from the inception of each provincial program. The debate surrounding mediation by lawyers centers on the ethical dilemma for lawyers. More importantly, mediation is seen to be a threat to the legal profession because clients may be enticed from the legal pervue. Riskin (1982) reminds us that the future of mediation rests heavily on the attitudes and involvement of the legal profession. It is unlikely that any movement perceived to be counter to the best interests of the legal profession will gather momentum even though all divorces require some level of legal assistance.

Resistance from the legal profession can be understood from Bill's comments outlining the determination of the legal profession not to cede further areas of the legal domain to another profession, based on the professions' experience with chartered accountants. A second hypothesis is that the legal profession as a whole, male and female, believe that work in the psychological area would promote a public perception of lawyers who also mediate, as being soft or feminine (similar to Farnon's unexamined findings of 1954), and perhaps less able to act in an adversarial manner when necessary. Lastly, those lawyers who may be concerned that the status quo may not be congruent with the ideals of the lawyer as servant to the public are reassured by members of the profession, who point to the statistics showing that most divorce cases are settled out of court. These members contend that the divorce lawyer is already a mediator and that any formal mechanism is superfluous. This may be in part true. One wonders what problem

exists that inhibits lawyers from learning techniques that would minimize potential harm to the family, when divorce agreements are concluded. It is possible to speculate that settlements are often concluded on arbitrary advice of lawyers, without the spousal participants engaging in constructive discussion with each other throughout the process. A settlement so concluded is not mediation, nor does it ascribe to the goals of mediation. It is a smoke-screen that conceals the intent of the adversarial process. The combination of these three ideas embodies formidable opposition to acceptance of divorce mediation by the legal profession. Lawyers may pay lip service to the ideals of mediation, formulated to inflict less psychological harm to the participants and intended to protect the children's best interests, but if this were the case, referrals to mediation would be steadily increasing. Low participation (by the public in mediation) has been found to be tied to the attitudes of the legal community and public and legal ignorance about the mediation alternative (Pearson & Thoennes, 1988). The Canadian Task Force Report agrees and observes that "the low demand for mediation services may be due . . . to the results of a recent study that found 'while 85 percent of lawyers advise clients about the existence of mediation, in only 10.4 percent of their cases is there actual encouragement to attempt divorce mediation.'"

Future Direction for Mediation and Lawyers

Irving and Benjamin (1987) emphasize that the divorce mediator and the lawyer should not be seen as adversaries. They point out that the positions are complementary. The people who have the most to gain from the good will and mutual respect between members of the two professions are the client couple and

their children. The difficulty for lawyers is that when once perceived by other lawyers as being a settler, status (the pinnacle being a "lawyer's lawyer"), is lessened and referrals decrease from colleagues.

It is, as Bill observed, important not to be perceived as one who routinely settles, or as Gandhi would say, one who has lost his soul. Bill and Pam are very clear about the goals of mediation and the boundaries within which they work. They are able to cross-over to divorce work and the adversarial mode, because they both enjoy competence, court work and have consistently cultivated their reputation as experts. It is significant that both came to divorce mediation with their reputation as counsel already established. It is possible to speculate that their professional reputation as divorce counsel may not have been as high if they had been seen by the profession as divorce mediators first and counsel second.

The dilemma of poor legal support for the concept of mediation has been noted often in mediation literature (Irving & Benjamin, 1987; Pearson & Thoennes, 1988; Smart & Salts, 1984). It is exacerbated by the fact that some of those who teach in law faculties are proponents of a school of thought that sees lawyers as already being mediators and mediation as an unnecessary additional expense and complication to a straightforward process (Pollock, 1987). Law school is the place to begin to orient the legal profession to alternative dispute resolution. Studies of medical students indicate that impersonal attitudes held by medical students towards their patients are most influenced by role models provided by senior faculty members (Coombs, 1978). Despite the best attempts to teach divorce mediation, it seems unlikely that student commitment to the mediation process will develop if the course is not presented as a philosophy demanding respect and taught by valued

members of the legal profession who are committed to the goals of divorce mediation. One possible solution would be to recruit respected divorce lawyers, who also have experience and are reputed to be effective divorce mediators, to develop lectures to be included in a basic family law unit. The lectures could address the problem of divorce settlements, clearly defining the boundaries between the two related fields and their intent. In this way young lawyers might be more willing to refer suitable candidates to divorce mediation or to become mediators themselves. A recent task force report to the Canadian Bar Association upholds a similar view. Thompson, Cosman, Potter, & Kelly (1989) contend that "Education for the Canadian legal profession must be encouraged at all levels of training. . . there is a need for coordination and cooperation at each level and among the levels of legal education" (p. 44).

A related difficulty occurs when lawyers use mediation to further their own objectives, and subvert the process if negotiations in divorce mediation result in unfavorable terms for their client. Pam calls this attitude "a kind of moral dishonor," and Bill says that "some lawyers prostitute the mediation process in paying lip service to it . . . and I think that's intellectual dishonesty." Lawyers who use every means possible to further the interests of their client in order to win, would seem to have little or no understanding of the purpose of mediation. Pearson & Thoennes (1984) have found that very few clients will continue to mediate against their lawyer's wishes. For mediation to expand, it is critical that a complete understanding of the process and its attendant goals be formalized and integrated into the legal body of knowledge. Perhaps the goals of divorce mediation could be taught in different ways, over the three years of legal training so that lawyers will

not embarrass themselves by crossing specific and specified boundaries in their practice.

Implication for Divorce Mediation Education

Recently, a body of thought has arisen regarding divorce mediator education. The Academy of Family Mediators and the Family Mediation Association proposed five mechanisms for quality control at a symposium held in Toronto in 1983. The mechanisms include licensure, certification, accreditation, registration and the formal subscription to a standard of practice or a code of ethics (Milne, 1984). Divorce mediators need training because conflict management procedures are new and unfamiliar to most novices (Moore, 1983). As previously noted the probability of a successful resolution of a dispute increases with the amount of experience held by the mediator (Pearson, 1981). The concern of those responsible for mediator education now extends beyond practical experience. The level of knowledge in diverse but related fields which each practitioner holds becomes more important as the movement becomes a profession.

Koopman (1985) contends that the ideal education would be a two year post-graduate level, multidisciplinary degree from an accredited university. She envisions a degree which would encompass all aspects of mediation. The idea has been suggested by other writers, (Girdner, 1986). It holds more appeal in 1989 when "head hunters" for the insurance industry are recruiting lawyers with family mediation experience to negotiate nondivorce related settlements on the companies' behalf. The industry has found that lawyers with this type of experience, settle claims in a minimal time frame and continue to have the good-will of the clients.

Koópman's (1985) study highlighted a concern expressed by all faculty members canvassed, that adequate practice time and competent supervision be an important component of any mediator training program. Just as lawyers, doctors, dentists and psychologists are trained in practicum settings, the experience of the co-researchers, regardless of educational background, indicates ease of practice increased with number of cases handled. It is suggested that any education component of mediation training contain a minimum of ten to twenty hours of supervised case experience. The hours suggested are based on Pearson's findings that mediators with more than ten cases double their effectiveness from 30% to 60%. The practicum time would be designed to increase mediator effectiveness.

The results of this study indicate that personal style did not affect mediated outcomes. Blades (1984) places lawyers at the directive end of a continuum with mental health professionals at the opposite end. Pearson & Thoennes (1981) found that mental health professionals tend to become more directive, and lawyers less directive with experience, until a balance was reached by members of each educational background. The deciding factor of effectiveness in the study investigating shared qualities of effective divorce mediators was judged to be a commitment to the divorce mediation process, and an obvious caring about people which transcended technique.

In Alberta, as in many other jurisdictions, divorce mediators from either a legal or a mental health background must have attended a minimum of one 40 hour workshop before being allowed to practice. Instances of poor or unethical mediator behavior at this period of the profession's development are likely to be the result of ignorance or poor training rather than of bad intent (Moore, 1983). The degree of

professionalism found in all mediators seems to cooborate Moore's thesis. All co-researchers displayed a high ethical component. For example, rather than mediate in an area where she feels uneasy, Pam ensures co-mediation with a health care professional. The ethical code of each profession demands competence. It seems likely that additional hours of practice would be accepted by divorce mediation students, as a method of ensuring competence and of avoiding the pitfalls of venturing into uncharted waters.

Contribution of This Study

A major purpose of an investigation into the shared qualities of effective divorce mediators was to place knowledge from three fields into a context which would focus the issues for those interested in divorce mediation in Alberta. Information about the qualities shared by divorce mediators should help to ensure that members of both professions be able to understand and search for these qualities in the divorce mediators that they may use as experts. In this way, lawyers or other professionals may refer clients with greater assurance of a positive divorce mediation outcome.

The perspective of those in the legal field varies from that found in psychology. Some of the results show that members approach mediation with different world-views and goals. Results seem to confirm Girdner's (1986) contention that lawyers tend to be content oriented, while psychologists concentrate on how the agreement will affect the clients and their children. The predominant theme, however, was the focus each co-researcher placed on obtaining a signed agreement. The language which members of each profession brings to mediation is

different, thus shading mediation with different meanings. The field of divorce mediation is dynamic and mentally absorbing. It holds the attention of practitioners from both areas.

Irving and Benjamin (1987) maintain that the success of mediation is predicated on the qualities the mediator brings to the negotiation. Findings from this study indicate that there is a tendency for effective divorce mediators to maintain a cognitive problem solving approach to their work. Effective divorce mediators from either background have counselor qualities that allow them to relate to each of their clients from the client's perspective and communicate in a caring, effective and efficient way, while moving the negotiations closer to agreement. All mediators were committed to the mediation process as a humane method of divorce dispute resolution that will ultimately benefit all members of the divorcing family. Value systems of the co-researchers tended to be similar. None would agree to mediate to the advantage of the most powerful person in the dyad. The most important consideration for all was the well being of the children, although motivation to mediate may have been diverse.

Motivation to mediate varied. The determining factor in this study was found to be an abiding belief that positive factors in the divorce mediation process outweighed the negative. Concerns about unsuitable divorce mediators subverting the prospects of the mediation field appear to be unfounded, as long as a genuine belief in the value of the mediation process evolves within the belief system of the divorce mediator.

Implications for Future Research

Divorce mediation as a field of study would benefit from further research in a number of areas. Irving and Benjamin (1987) encourage work into the effectiveness of the therapeutic model as compared to other models of divorce mediation. They question the range of nonspecific factors in outcome success and would like investigation into successful versus unsuccessful cases. Kressel (1985) proposes that the evidence is too weak to reach a firm conclusion about the superiority of divorce mediation over the adversarial procedures now in place, although he allows that the evidence points in favor of mediation. He observes that the appropriate question is what types of disputes and for what types of outcomes is mediation appropriate? The Canadian Task force Report urges research and study into suitable and effective alternative dispute resolution, the effectiveness of mandatory alternate dispute resolution, and accreditation for neutrals.

Investigation into the effects of mediated versus adversarial divorce on children is critical. Research to determine if a children's ombudsman would be effective in divorce, including mediated settlements, would be helpful to all who consider children's best interests to be paramount. Questions outweigh the accumulated body of evidence in all areas.

I believe that the key to effectively mediated settlements is an effective divorce mediator. Research into the most appropriate means of mediator development is practically nonexistent as is research into the beliefs, professional attitude, and characteristics that the mediators bring to negotiations and how these qualities are used. "Available data confirms, that mediation and advocacy be seen as complementary approaches to dispute resolution. A major question concerns

who should best be advised to participate in the one and who the other" (Irving & Benjamin, 1987, p. 25).

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Appendix

Issues arising from two in-depth interviews were initially analyzed in sequence for each person. Tables 1a, 2a, 3a, and 4a represent thematic abstractions of each person's experience. Column one contains excerpts from the transcribed interviews. Two levels of abstraction were applied to each excerpt. Column two reflects the first level of abstraction, which is a paraphrase of descriptions chosen to illustrate an underlying quality or idea held by the co-researcher as it related to experience. As an example, Joe's statement " I charge more because it's difficult" is paraphrased to illuminate the underlying belief that the difficulty of the work should be reflected in fees. Column three of Tables 1a, 2a, 3a and 4a, represents a second level of abstraction which formulates a theme designed to distill the paraphrase from column two, to its elemental form. Following our example, the second level theme becomes professional worth.

Table # 1A

Thematic Abstraction of Joe's experience as a psychologist/divorce mediator

Excerpts from transcribed interview	Two Levels of Abstraction *1. Paraphrases*	*2. Themes*
1. I think that I am offering really a mental health service, a psychotherapeutic service for a particular symptom, and that symptom is the problem that people are having in saying good-bye.	Realization that mediation helpful in disengagement.	Therapeutic orientation.
2. I started off as a psychotherapist for children from an analytic background. And then I got a reputation for knowing something about kids and families, and so pretty soon they're asking me if I couldn't offer some kind of expert opinion in court as to what might be best for the kids in a custody or access dispute.	Reputation as child expert arose from psychotherapeutic background.	Recognition that best interests of children primary motivator.
3. I'm discovering that the children especially are having a whole lot of trouble with the divorce and are reacting to divided loyalties and the family is stuck in its task of moving from a married family to a divorced family.	Recognized family's task to change, needed therapeutic help.	Therapeutic orientation.
4. So in my initial attempts at mediation, I was trying to resolve the conflicts by getting the people to understand one another... unfortunately. I would be very successful.	Initially tried to create understanding.	Initial counseling orientation.
5. But there would be such an escalation of conflict that it would blow the mediation and everything right out of the water. And the mediation would stop and fail.	Awareness of wrong goal.	Self knowledge.
6. We figured that applying the techniques of saying hello was inappropriate and counterproductive to families in mediation because the real task is good-bye. And we began to do exactly the opposite things that a marriage counsellor would do.	Realized counseling goals opposite to mediation.	Transition in professional perspective..
7. I would communicate to her that I understood but that didn't she realize that he was never going to understand and that it was futile to try to make him understand.... And I communicate to him that I understood and I'd say understanding things to him, showing him that I could understand his perspective. I had validated their divorce.	Able to understand both peoples perspectives.	Polycentric empathy.

8.	There was almost a palpable sight of relief on both of the couple's part.	Gives permission for divorce.	Recognition of influence.
9.	After a session or two of those kinds of interventions, they really did begin to be able to pay more attention to their task of parenting their children.	Goal directed – best interests of children.	Recognition that best interest s of children primary motive.
10.	What they (children) are attempting to do is show their loyalty to both of their parents and how better to show your loyalty than to say some negative things about the other parent .	Understands stress on children.	Empathy with children.
11.	And I help them to be aware that the kids are doing things unwittingly and unintentionally that are causing the conflict.	Reflections enable him to teach about children's feelings in divorce.	Teacher role fulfilling.
12.	Saying what we really need to do is build up your adequacy as parents and your self respect as parents and that will help you leave your role as a spouse and then we can get on with our task of how we're going to parent these kids.	Recognizes need to build parenting skills to enhance mediation process.	Therapeutic goal orientation
13.	They begin to get some awareness and some experience that the kids really can be okay with each parent, even though the parents are very different. That seems to me to be kind of the essence of what I'm doing when I mediate.	Shift for clients to therapeutic end goal for children.	Recognition that primary motivation best interest of children.
14.	I didn't become a mediator or an evaluator because I chose that kind of work or I liked it. I began to pay attention to the issue of divorce because I was concerned about children.	Recognition that primary motivation best interest of children.	Motivated by childrens needs.
15.	The first prospect of sitting with people that have this much difficulty and animosity with each other is very uncomfortable for me.	Emotion and expression of emotions uncomfortable at first.	Learned skill.
16.	I learned that there is a human issue here that needs treatment. And it's quite rewarding. Why does this family have to have this conflict and why can't they settle this? What is it that each parent is really concerned about and interested in?	Learned to analyze hostility as problem to be solved.	Finds satisfaction in analysis and problem solving.
17.	I charge more because it is more difficult.	Believes cost of difficulty of work should be reflected in price.	Professional worth.

18.	(In an evaluation) I go on to recommend for the balance, for those issues on which they can't agree, what seems to me would be a reasonably mediated solution, if they were able to mediate. Lawyers and the couple are almost forced into a mediation stance because all they have left to fight about is they don't like Section 5(a)... etc.	Looks beyond obvious issued to understand so evaluation is fair but forces parties to mediate.	Value system. Use of analysis and problem solving.
19.	I'll be called as an expert witness, and I'm prepared to defend, as a psychologist, the recommendations I've made and why I've made them. And there's always good clinical reasons.	Takes pride in work and reputation – will stand by his clinical evaluation.	Professional commitment.
20.	The balanced solution is usually indeed the best solution for the children of this particular family, if it truly represents the position of both of their parents.	Believes that balance and moderation best for all, especially the children.	Value system balance primary motive best interests of children.
21.	What really influences the recommendations I make is my experience as a therapist where I can have a parent or couple of parents come into my office for counselling and they have kids of such and such an age that are reacting in all kinds of problems.	Experience as a therapist influences mediation to some degree.	Therapeutic orientation.
22.	I feel that there needs to be a balance but there isn't a right way and a wrong way, or that my own personal way is only one way.	Flexible about solutions.	Non judgmental.
23.	All those times when one may be out of sorts with one's spouse. That thought (of divorce) doesn't cross one's mind nearly as readily, you know, as if I hadn't been exposed to the other side of the coin.	Uses distance language to protect from invasion into domain of own family.	Separation of professional life from personal life.
24.	There are times when I get more personally vested and involved with the problem and try to control what's going on too much.	Recognizes that mediation is client's responsibility.	Views client as capable,
25.	At which point I can make the mistake of arguing or starting some kind of a campaign and at those time I am affected and touched by something.	Recognizes mistake in becoming responsible for outcome.	Self awareness.
26.	Whereas with mediation, which I think operates by very different rules than any other kind of therapy... There's an aspect of needing to control the process actively, more actively than in psychotherapy.	Recognizes the goals are different for mediation and therapy.	Recognition that mediation goal directed.
27.	I've got a mandate to somehow control the process. I'm busy reminding myself that this is roughly my responsibility.	Takes responsibility for mediation process.	Professional responsibility

28.	These are very desperate people in a very desperate position in their lives. And that's exactly when I'm susceptible to taking more responsibility than I should or starting some lobbying.	Aware that clients in a crisis situation force responsibility on him.	Views clients as capable. Self awareness.
29.	They get the agency and the responsibility back on the client where they deserve, you know, where it belongs.	Aware that mediation results are client's responsibility.	Views clients as capable.
30.	I feel that most of the people that we see that are in such distress and difficulty around their divorces at one time in their lives were really quite together....	Views client's actions is out of character through stress.	Attitude towards clients one of respect.
31.	My theory became that people go crazy during their divorce and therefore you should not make recommendations about what to do with the children or who they are based on the last year.	Careful to recommend best interests based on parenting prior to crisis.	Value system. Best interests of children.
32.	I tell people in evaluation as they try to convince me how crazy the other parent is, that this might be a function of going through the divorce.	Explains to clients to help process.	Teacher role.
33.	In mediation, I attempt mostly to point out to the couple the futility of trying to resolve issues in the past, they're getting a divorce is because they've already determined that they can't resolve those issues.	Helps to bring closure to the marriage by teaching that issue is beyond resolution.	Therapeutic teacher role.
34.	I first try to deal with that at the very beginning. I always try to determine at the very beginning where the parties are on the divorce issue.	Understands stages of divorce and possibility that one party may not want divorce.	Uses of analysis based on professional knowledge.
35.	They're trying to force the other person to stay in the marriage that he or she doesn't want. And then my fear for them would be that they might succeed – I tell them, I really think that you deserve better than that.	Brings realization of inevitability of divorce to unwilling partner with empathy.	Empathy.
36.	I like what I do, I want to keep doing it forever, and so I do it 25 hours a week or so. I'm usually not fatigued, but I've been working hard and I feel glad to have it and get on with my other activities.	Derives satisfaction from his work but aware of mental strain in work. Works less to maintain quality of work and satisfaction.	Self awareness of strain of mental work.
37.	(Meets with) Both lawyers, both clients,both parents and myself. I used to refuse to take any case where we couldn't begin with that kind of meeting because it seemed to me that it greatly, greatly increased the odds of a successful mediation.	Recognizes influence lawyers have over their clients and uses meeting to enhance goals of mediation. Not threatened by other professionals.	Professional commitment to therapeutic goal.

38.	I have always found that... its the unconscious, the unknown, the unspoken things that are always discovered and there is some misconception that the lawyer has,or some misconception that one of the clients has.	Interdisciplinary meeting outlines understandings, spoken non verbal.	Takes responsibility for communication.
39.	It's not that unusual that a person isn't getting swept along in the divorce and the custody conflict and all the rest when really their lives are absolutely desperately falling apart. So no way they should be expected to conduct serious negotiations about their kids.	Will only mediate if clients seem to be able and competent.	Value system used in evaluation.
40.	Other times there is a financial issue at that original meeting with the lawyers and it's really good that the lawyers are there as often you know the woman is absolutely desperate and she's not going to have food on the table and he's holding out at his lawyer's advice or what his lawyer's going to say, he's holding out at because he doesn't want to prejudice his position and wants to get a settlement....He learns that he is not railroaded and that he still can negotiate.	Recognizes that interprofessional first meeting establishes trust.	Recognition that professional competence helps to establish trust.
41.	For me personally its more unpleasant, I find it to be more difficult to sit with interpersonal conflict than to sit with somebody, the purpose of which is to make contact in amongst ourselves,...My own personal tension is higher. I like it because of the good it does.	Conflict and open expressions of hostility or anger uncomfortable.	Professional discomfort motivated by best interests of children and therapeutic goal.
42.	Acknowledge and I help them acknowledge, they really, its the loss, you know desperation and all that.... What it does for the mediation is that it helps to put aside the marital conflicts and to get back focused on the issue for the kids you know the task at hand.	Acknowledges emotional pain of each client to enable the focus to return to task of session.	Goal directed empathy.
43.	If they were to acknowledge at that time that they needed some personal help from this, I would ensure them the opportunity. Their own personal therapy about that issue is a side issue.	Does not consider personal therapy to be a goal of mediation.	Recognition that personal counseling may interrupt mediation process: therapeutic goal.
44.	My objective in mediation is again,to help them know and experience that the marriage is over and to provide an answer to the past and from there we have to go on and arrange the lives of the children.	Mediator neutrality openly biased in favour of the children.	Recognition of primary motivation biases mediator neutrality.

45.	The ones I feel best about are ones that come out with arrangements that seem really balanced and workable and the children are going to be fine.	Enjoys succeeding when children do well.	Primary motivation best interests of children fulfilling.
46.	That this bad agreement, bad for the kids,bad for the family is being undertaken because it is better than what is going on now.... It's an improvement and that they know that, they know that they can't do any better. ...at least we will get them to the next step.	Bad agreements tolerated as necessary but on an interim basis.	Recognition of professional limitations.
47.	Its a very powerful time to allow everybody you know to decide that we really can't solve this problem and mediation fails.	Recognizes that not all people able to mediate.	Recognition of professional limitations.
48.	Maybe we should have a final meeting with the lawyers, all of us and see if with their help we can't get past this problem.... very often at that meeting the whole thing will be solved. Usually I feel it's because the lawyer for the person whose decision it really was quite unreasonable often go to the lawyer who help them make the compromise in preparation for that meeting.	Returns responsibility to client or lawyers of client rather than make unfair agreement.	Recognition that value system force limitations.
49.	I don't feel that the solution that emerges is particularly to my credit nor do I feel that the, you know the failure to reach an agreement, is particularly in my credit. The agreement that's reached is usually their agreement that they feel that, they know and it was their ability to compromise and entertain possibilities.	Credit for success and failure belongs to clients.	Views clients as capable. Recognition of professional limits.
50.	The fundamental human quality that seems to cut through it all is the ability to understand both sides,both people's perspective to show respect and validation for both people's position.	Ability to understand and respect each client critical in a good mediator.	Polycentric empathy and respect for each client.
51.	The thing that cuts through all of this is the ability to know about oneself.	Mediator must understand self.	Self knowledge.
52.	I would assume that the more dogmatic such a person is about truth and right in the world the more difficulty that person would have with mediation.	People who believe in absolute truth and absolute right not suitable to mediate.	Non judgmental.
53.	I know that they are suffering and that I'm compassionate towards that suffering and that I am prepared to understand it is a way of communicating to people when they are at their worst. The notion that as well there is something lovable, something legitimate.	Mediator needs to express empathy to encourage communication.	Empathy.

54.	I suppose the best test would be a person has that attitude and is how they talk about their cases when they are away from their office, …It would betray for me an attitude that they can't be very good.	Feels that respect and understanding for client should be carried through to personal life.	Value system. Empathic respect.
55.	I honestly feel a great compassion for people I'm dealing with in spite of the fact that I see people at their absolute worst.	Unable to be cynical about people involved with mediation.	Perceives self as compassionate.
56.	I can have people in here just absolutely ugly and fighting and all of that and something happens and look me in the eye again and say thank you. Anybody watching the session would say well for what. When they get upset with everything I did.	Because clients feel understood and respected they are free to express themselves but know that the mediator (Joe) has given permission.	Appreciated by clients. Satisfying.
57.	…help that I wish that I had had, and that I needed when I was child … the family I grew up in, there were significant differences and significant conflict, under the surface between my father and my mother about child rearing differences… the best therapy happens for children when conflicts … were worked out such that the children were no longer caught in the middle….	Own experience as child of conflict motivates best interest of the child mediator.	Self awareness of personal reason for primary motivation.
58.	In parent child counselling both of the parents are there because they want to come to a harmony, a consensus of opinion about the children and a consensus in a way of treating the children.	Goal to promote harmony in life of children.	Recognition that primary motivation best interests of children.
59.	It's an extremely interesting process to watch people come to terms with their divorce with actually accepting and realizing the consequences of their divorce as they go through mediation.. The distinguishing characteristic that I would perceive is the mental health types and lay person or typical lawyer type would be that mental healthy types are always interested in underlying process.	Main interest is the process of change resulting in emotional acceptance of divorce by client.	Objective, analytical. Therapeutic orientation.
60.	I would be paying a whole lot of attention to what's happening to people emotionally and psychologically as they go through this process and how they are changing on some deeper personal level. …I mean that's what makes it interesting. That's what makes it more meaningful.	Finds meaning in client's emotional acceptance of divorce.	Personal satisfaction when secondary goal reached.
61.	The adversarial nature of the litigation process. You're never more engaged with your partner than when you're in litigation. Whether we're talking a previous spouse or a business partner you are living and breathing that individual.	Feels that litigation does not accomplish emotional separation of clients.	Professional commitment to therapeutic goal.

62.	My way of being helpful is to be loyal to their stated desire for the marriage to work and that would not be right or proper for me to be the one who would put any momentum to the idea of separating or calling it off.	Recognizes the difference between marriage counseling and mediation.	Professional commitment to goals of session.
63.	The way I experience it is that the teaching comes in a sense that nothing in our background has prepared us for the idea that we can still be a family after a divorce.	Recognizes teacher role.	Teacher role.
64.	I ask the parents in the very first session what it is they are most afraid of. Almost every time, ultimately what they are afraid of is they are going to lose the children. Both of them. So you get an agreement in the first session that neither one of them is going to lose the children.	Aware that fundamental loss for each parent is the loss of the children.	Plycentric empathy.
65.	The parent that is in that situation... is very caught in the middle and that the parent's consternation, anxiety and frustration and all the rest is a direct result of being caug t in the middle of all of these forces. When the mediator draws parallel between how that parent is feeling and how the children are feeling they almost always settle down and get more committed to the notion that their kids are not going to go through that.	Uses techniques to parallel parents' anxiety to illustrate division the children feel.	Best interests of children.
66.	The idea that they could do something for a month or they could try something for two months or they could try it his way for a while and her way for a while with no precedents, no commitments, just agree to take turns. One month this way, one month that way will almost always get the family, or get the couple off of a log jam.	Encourages creative and flexible solutions.	Encourages creative flexibility.

Table # 2A

Thematic Abstraction of Cecile's experience as a psychologist/divorce mediator

	Excerpts from transcribed interview	Two Levels of Abstraction *1. Paraphrases*	*2. Themes*
1.	In counselling,... and if we're going to our files and I'm saying that it was successful or unsuccessful, that's my own judgment.	In counseling definition of success is subjective.	Professional role– counselor goal.
2.	In mediation, I have something objective and concrete...If I'm successful, the parties have an agreement.	Mediation-agreement basic form of success.	Professional role– mediator goal.
3.	If both parties say that they're satisfied with the agreement and not going to litigation, I would consider that success.	Defines success as mutual agreement.	Professional role– goal directed.
4.	I feel very satisfied because not only have they saved themselves a lot of time by not going to court, but I think it's a lot easier on the kids too.	Personal satisfaction based on best interests of children.	Value system. Best interests of children fulfillment.
5.	The other thing is that I feel that these people are more likely to follow an agreement that they have drafted themselves...judge imposes something, or if somebody else makes the recommendations in court, people are less likely to follow through on that.	Believes people more responsible for results in self determined process .	Value system. Self determination superior for clients.
6.	Parents who work out their own agreements...fathers are more likely to pay the maintenance than if the court has just imposed a certain sum .	Fathers pay maintenance if self determined-best interests of the child.	Motivation best interests of children.
7.	What I can do is encourage them to brainstorm to come up with ideas and I think my role in the event that they get stuck and they're unable to come up with ideas, I can generate a lot of ideas. I have been here 11 years. You can think of all kinds of ways for people to solve problems.	Sees role as helper-creative problem solving.	Enjoyment of creative problem solving.
8.	No, I'm suggesting that that sort of person can be trained, but underneath that is something that they have.	Thinks some people predisposed to mediate with training.	Believes in shared qualities of mediators.
9.	...it will tell you a fundamental belief that people are able to solve their own problems. That belief in other human beings.	Fundamental belief-people able to solve own problems with some guidance.	Views clients as capable.

10.	I often see the lawyer having difficulty as he or she is the expert. People are perceived as not being able to solve problems for themselves. Therefore the lawyer comes up with a solution.	Sees mediator/lawyers having difficulty relinquishing decision making control to people.	Views people as capable.
11.	I think that's part of the empowering is to have that kind of belief about them.... you can solve the problem. No, I'm not going to solve it for you.	Uses her belief to empower people.	Views people as capable.
12.	I just answer only to myself and I'm the one really that has to struggle and find a solution.	Self reliant problem solver.	Self awareness of past experience influences C's life.
13.	I feel that if you do too much for your clients, then they depend on you... That dependency is really unhealthy for them,... the goal is to help people be independent, not dependent..	Believes encouraging dependent clients not emotionally healthy. Goal is to have emotionally healthy client's.	Therapeutic orientation.
14.	And there's that temptation to just jump in and say for God's sake, let's do it this way. Let me tell you how you're going to do it.	Aware that she is sometimes frustrated by clients slow progress.	Self awareness of impatience with progress.
15.	Here we are stuck, just like we were many times (inaudible).... you've come a long way and if you've come this far, there's no reason why you're not going to go.	Actively encourages clients to work.	Professional role– mediation active encouragement.
16.	It was just an expectation that you were going to be dealing with couples that are separating, they are thinking of divorcing, or for those divorced, and you're going to be helping them deal with their feelings.	Did not choose mediation but understands differences between therapy and mediation.	Professional role– began as counselor.
17.	Although if the person needs ongoing help, then I will refer them. If it's going to be a longer term counselling, then... maybe we will come to an interim agreement until such time as...	Interchanges role of mediation with therapist.	Professional role– flexible.
18.	There are certain people that are just not ready for mediation. And you know it because they haven't gone through the grief process... think of the stages of dying. It's inappropriate at that time to mediate.	Aware of stages of divorce. Judges clients ability to mediate.	Value system– clients ability to mediate.
19.	It would be unfair for a person at that stage to mediate.	Strong sense of fairness to clients.	Value system.

20.	I've had cases where one individual feels so guilty, perhaps because they've had an affair... that they're willing to walk away without a cent... so I can walk away with a clear conscience and I will not mediate under those circumstances.	Understands client's motivation. If situation is unfair refuses to progress.	Value system.
21.	And I often sit down with both parties and talk about the stages that the person needs to go through.	Teaches stages of grief in divorce process.	Teacher role.
22.	I also turn to the other person and there's the balance of power, and say you don't want an agreement where this person here is going to renege in six months' time because he or she is grieving...	Responsible to both clients. Points out disadvantage of proceeding to spouse.	Professional role– Responsible to both clients.
23.	Within the first half hour I have a pretty good idea of whether we're going to be successful...I'm a believer in people watching ah hah, this is going to be a difficult session where you get somebody to stand by the elevator pit, and not even come into the waiting room with his wife.	Relies on observation as indicators.	Professional role– observation.
24.	I tell people that I have advised and my bias is that I believe children should have two parents. So that sometimes runs contrary to what one person would want here, especially if you're dealing with somebody who is bitter and may be clinging.	Best interest of the child to have two parents.	Motivation best interests of children.
25.	There's a lot that's been written lately about the disadvantage to women who came to mediation.	Current with professional literature.	Professional role.
26.	Financially the husband may have the upper hand but when it comes to children, women have the upper hand. I think women are very good. negotiators.	Believes power balanced by children.	Views client as capable.
27.	And some people will say they're disadvantaged because they'll see the man as perhaps being more aware of the law, where he stands in relation to the law. So we encourage people to discuss things with their lawyers all the time. In that way, the woman isn't disadvantaged.	Women competent to negotiate if knowledge available.	Views clients as capable.
28.	Women are all capable and therefore, instead of having daddy look after you, the lawyer looks after you.	Feminist views on capability.	Respect for client.

29. If I perceive that one person, whether it's the husband or the wife, is lacking confidence, perhaps because they're lacking information and the other party has actually consulted with a lawyer.	Provides information to increase client's self confidence and balance of power.	Value system. Clients entitled to equal information.
30. If there has been severe abuse and intimidation in the marriage, and this is a woman who is afraid of her husband, I don't think mediation is appropriate.	Not concerned abut neutrality and does not mediate cases of abuse.	Value system.
31. I would say I think these people are inappropriate for mediation and suggest that they use the court system, or have somebody do a home assessment for court recommendation so that you can get the best for the children.	Best interests of the child.	Motivation best interests of children.
32. People are more likely to ask about my personal life experiences than they are about my qualifications... but it's not uncommon for people to say have you ever been married? Have you ever gone through a divorce? Do you have children?	Clients able to ask personal questions about her.	Open about self.
33. They're far more interested in my personal experiences. That's an important question for people... And I feel that helps us to connect.	Uses self to facilitate process.	Open about self.
34. There again I'm saying to them, I respect you for taking this much trouble, no matter how difficult it is for you. I know how difficult it is not to allow a lot of feelings that you feel for one another to get out of hand, and that you're still able to look after business.	Encourages mediation by being honest about difficulty of process and offers her respect.	Respect goal directed.
35. If I'm tired and I'm getting drained and expending a lot of energy, I usually look at myself and I say oh, oh, what on earth is going on here? What have I been doing? And it's like trying to step outside yourself and sort of observe what you're doing. Most of the time I have found I'm working and these people aren't.	Able to dissociate from process to evaluate session.	Analytic ability.
36. I feel good, I feel as if we've accomplished something. There's a sense of satisfaction, a sense of accomplishment, sense of pride and there certainly isn't that draining feeling. You're not expending a lot of energy.	Movement in negotiations engenders feelings of satisfaction and accomplishment.	Professional role. Satisfaction.
37. A sense of accomplishment, it needn't be that we have a whole agreement worked out. It may be that we just have part of an agreement and there's that satisfaction, as this was such a tough issue and we've cleared that hurdle and it feels good. And they usually feel good too.	Breaks process into manageable parts and incorporates positive feelings as incentive to continue.	Professional role. Satisfaction goal directed.

38.	Accepting rather than judgmental. I think if you're judgmental, you can't go anywhere. I'm here listening to someone and you're saying to yourself, oh, she's being such a bitch, you're not going to get anywhere. If you're able to get beyond the "she's a bitch" too, she's really hurting and she's feeling abandoned. And to acknowledge it. They feel understood.	Recognizes that to be effective she must understand and accept client rather than judge.	Non judgmental.
39.	You're accepting the person's hurting, you're understanding why they're lashing out, and you acknowledge that they feel understood, that sure facilitates the whole approach. And maybe that's where it's important to have those kinds of skills to go beyond what you've seen in the person.	Accepting facilitates progress.	Therapeutic orientation– accepting-goal directed.
40.	You've got to have empathy for the person and to know what it must be like to be in her shoes... to have been let down, to have been abandoned, and have all these things happen.	Believes counselor skills important to mediate well.	Empathy.
41.	Somehow the acceptance generates change. If you try to change the person and you try to say to the person, don't be so angry, don't be unreasonable, they're just going to resist but it's at this point you accept them and you acknowledge and accept it...make the shift from not being angry to suddenly dealing with the task at hand.	Acceptance generates willingness to change in client.	Empathy. Goal directed.
42.	And there again, you know, you're acknowledging the person's feelings but you're aware that the task is to negotiate an agreement. I'm not going to get sidetracked into suddenly doing therapy here. Acceptin gis therapeutic, but it isn't therapy necessarily either.	Able to distinguish between therapy and divorce mediation.	Professional role– differentiates therapy from mediation.
43.	If there is a time limit where they're going back to court in four weeks time or six weeks time, there's been a court date set, I'm more aware then the task at hand is to reach an agreement. So that's definitely my primary function.	Aware of time pressure to conclude agreement.	Professional role– goal directed
44.	I like the people I work with. I like my clients very much. Most of the people I see I feel very, very good about.... I mean, that really makes me feel good to have clients come in and say, you were so helpful. The kids are doing fine.	Enjoyment of co-workers and clients especially successful result that benefits children.	Professional satisfaction. Motivation best interest of children.
45.	It takes an awful lot to get me in a knot, an awful lot. I think that I can deal with a lot of hostility and a lot of anger without it affecting me personally.	Separates self from other people's emotions.	Objective.

46.	I enjoy the issues that I'm dealing with. I was going to say that I feel that I'm good at what I do.	Takes pride in work.	Professional pride.
47.	I'm good at working with these particular types of people. Now, there are certain issues that I would not be good at and I know better than to work in that kind of a work environment. I would find it very difficult, for example, to work with people how either abused alcohol or other substances.... I don't think I would be very effective. I would never work in a setting or with individuals where I thought I was ineffective.	Understands the issues that she is effectively at.	Self knowledge. Objective about self.
48.	I like the kind of people and I have the fortunate situation where I'm dealing with fairly well educated middle class people. ... a more acceptable thing for educated people to see a therapist, see a counsellor, to see a mediator.	Enjoys clients similar to self.	Respect for client.
49.	And they're exciting to work with. I mean, it's really nice to see this, that parents are sharing the parenting responsibilities. ... children needing both parents.	Best interest of the children to have both parents act as caretakers which usually happens in upper middle classes.	Professional role– flexible. Motivation best interests of children.
50.	I have a sense of pride when they come along and they tell me how helpful I was. Everything is going well in their life.	Finds meaning and satisfaction in helping others.	Fulfillment.
51.	I see people sometimes when they're really down and out. They are depressed, they're feeling like failures,... you'll look back on this and you'll think it was a good experience for you, or that you're going to grow and you're going to grow in a really positive way. You're always reaffirming your faith in people.	Secondary objective of mediation for client's personal growth and acceptance of situation.	Therapeutic orientation.
52.	When you're seeing people at the initial breakup stage, people are making the decisions on the future of their marriage, it's a pretty traumatic time to be working with people.	Recognizes psychological trauma makes people different than normal.	Accepting respect for clients.
53.	That's always the turning point and things will get better, and telling them that too.	Teaches that life will get better.	Teacher role.
54.	Maybe that's why I like my job, I don't have to go and rescue people or save the world. It's a good feeling.	Does not feel responsible for peoples decisions. Sense of liberation.	Professional role.

55. And somehow my faith in them has an effect on them. It has a positive effect on them. And if I believe in them, they then begin to believe in themselves. It works very well, I've seen it happen.	Believes faith in people enriches self esteem.	Therapeutic Orientation– views people as capable.
56. Sometimes just normalizing things for people is an important thing and I think that's an important role that I play.	Aware that people unsure of how they are-at this time.	Empathy.
57. There is a time when people behave very much out of character in a separation. They say things that are out of character, but no, they're not going crazy. To understand that yes, it's normal to get really mad and yes, it's normal to get really depressed. There are no shortcuts and they're able to accept that as important.	Accepts clients and teaches that feelings are normal.	Teacher role.
58. When I say that a person– and I feel that a person is not ready to mediate, I feel a lot of tension in the air. I feel that there's a lot of stress in the room. It's a gut feeling.	Physiognomic understanding of when a person not ready to mediate.	Intuitive– psysiognomic knowing.
59. The goal is to assist the parent in meeting their own needs, dealing with their own feelings and it's only in that way that they can be effective parents in dealing with their children.	Therapeutic secondary objective of mediation directed by best interest of children.	Goal directed by best interests of the children.
60. There's a definitely an issue of trust. I think telling people that it's voluntary to me is a very important thing. I find that there is resistance from clients who believe that they have to be there.	Recognizes importance of trust displaces responsibility for choice to client.	Views clients as capable.
61. Resistance is often in their tone of voice, a belligerent type of	Recognizes resistance by observation.	Observation.
62. I will say to them immediately,... If you don't want to be here, you don't have to use this service at all. I find that that sort of hooks them to say to a person, I acknowledge that you may not want to be here and maybe you'll choose not to use the service after I explain the process to you.	Does not focus trust on herself as a person but in a service.	Professional role– deflects personality conflict by calling mediation a service.
63. So you're saying, look, I respect you and you can say yes or you can say no and that's all right.	Choice lends respect to client.	Respect for clients.
64. I'm a great believer in offering people choices. People have the right to choose.	Believes choice empowers people.	Value system– believes in individual choice.

65.	They have a right to the court system and if they choose to go that route, I think that they should have that choice. It may not necessarily be what I think is in the best interests of the family, but I'm not there to tell people it's right or wrong.	Non directive about choice whether to mediate.	Self awareness. Views self as non directive.
66.	And when I'm able to say what must it feel like to have gone through three unsuccessful relationships, to be stuck with three children, trying to raise these kids on your own, she's on social allowance, and here's the third fellow who's abandoned her for another woman. and just trying to put myself in her shoes.	Empathetic to clients situations. Recognizes expression of emotions is a symptom.	Empathy. Comfortable with peoples emotions and their ways of expressing emotions.
67.	I can look at him and I can see,... he's looking at her and thinking that she's a bitch. From his perspective, here he is, he's connected up with this lady who had a low self-esteem, who doesn't want to deal with intimacy, who wants it but yet when she gets close to it, she pushes him away.	Empathy to spouse's situations.	Empathy.
68.	So trying to understand your clients is trying to, I guess, get under their skin and see things the way that they see things, not necessarily, as I say, what comes across on the surface.	Understands each persons viewpoint.	Polycentric empathy.
69.	I think it's easy to say well, he's really miserable and she's a bitch and they're unreasonable. And if you take that attitude, there's no way you can be helpful.	Mental flexibility motivated by desire to be helpful.	Therapeutic orientation.
70.	And often all it takes is that acknowledgment. someone else knows what I'm going through. You haven't solved the problem for them and all you've done is merely say, I think I know what it must be like to live your life. You're not getting into a counselling session, but you're acknowledging the pain and that's enough to get them moving.	Acknowledges emotions to enable negotiations.	Professional role– goal directed. Empathy.
71.	We talk about mediators being neutral and I think I've talked to you in the past that that is absolutely impossible. Of course, you can't be neutral, but we can be supportive of her in this position and then later on, maybe we suggest something that sounds reasonable and maybe the way I support him is to say, well, this sounds pretty reasonable, let's look at that. He's been told that his proposal is reasonable so at least there's a balance there of power.	Aware that mediation neutrality is more a balance of power.	Professional role is balance between clients.

72.	I don't for a moment believe that you could fake that, because if you thought this woman was a miserable S.O.B. and you thought this guy was so unreasonable, they wouldn't trust you. They know whether you're sincere or not. And if you're not sincere, I don't think you're going to get too far.	Understanding and mediator role must be genuine to retain trust of clients.	Genuine, sincere, goal directed.
73.	I attended some of those training sessions with John Haynes and we had half the group was lawyers and the other half would be either psychologists or social workers, that the lawyers tend to deal with the task at hand; getting an agreement, and they would ignore the feelings.	Personal experience shows lawyers not willing to deal with feelings.	Objective. Evaluates effectiveness based on ability to deal with feelings.
74.	You're helping them to develop a different kind of relationship, a business arrangement, where the business at hand is the raising of the children and you're binding them as parents, to parent the children.	Teaches new relationship skills to parents for sake of children.	Best interest of children.
75.	You talk about empathy, acceptance, genuineness, you know, all of the qualities that you need to be a good counsellor. Those same qualities are being used, you know, as a mediator as well.	Believes counselor qualities also necessary to mediation.	Analysis. Sees self as having counselor qualities that enable mediation.
76.	He (Haynes) said one of the reasons I wouldn't have the children in the room is that there might be a lot of anger and hostility and that would be frightening to the children... Whereas, Howard Irving has always welcomed the children to be part of the mediation and isn't threatened by hostility, anger, whatever the negative feeling may be.	Purpose of mediation to form a different relationship aimed at parenting children.	Primary motivation– best interests of children.
77.	Children have heard these fights a thousand times before... maybe this is safer to have the mediator sitting there, because maybe things won't escalate to the point where they perhaps would at home if there weren't an observer present.	Contrasts models of mediation. In favour of therapeutic approach. Best interests of child.	Primary motivation– best interests of children.
78.	I think facilitating, that both, whether you're a lawyer or a person from the health profession...could balance the power and both would probably play the same type of role in terms of educating.... psychologist might have an edge on normalizing. My guess is that they would have less of a tendency to do the normalizing to say that what you're experiencing right now is normal.	Skill as facilitators best psychological ability may be deficient with normalizing.	Professional role.

79.	Do they acknowledge that to the client though? You know, to know that is one thing, but are you explicit?	Not enough to understand– must state normalizing beliefs.	empathic communication.
80.	I probably spend more time on the educational part if I think there's a tremendous amount of hostility.... you sense that within the first few seconds you know that there's a lot of anger,... I spend a lot of time in talking about how important it is for parents to cooperate and spend a lot of time talking about the Kelly and Wallerstein studies in the United States, talking about the kinds of things that parents can do, how they can work as a team, how important it is for the children's mental and emotional health for them to work as a team.	Education role critical to best interest of child.	Uses senses to decide when and how much to educate parents. Best interests of the child.
81.	It's not for the couple, it's for the kids that you really feel for. And you just see what a loss, a loss for those kids. There is no hope whatsoever of having a good relationship with the absent parent.	Believes children most important reason to mediate.	Primary motivation– best interests of children.
82.	And then you look at the parent who's alienated those kids and you think, what hope is there for that individual to ever have any happiness in life? How can they ever feel good about themselves. And if they don't feel good abut themselves, there's no hope for them to ever have a relationship that can be satisfying. That's the sadness. it's about the children, about these people, you know that it's– and there's nothing that I can do.	Genuine feelings of sadness when unable to help personal growth or children of divorcing family.	Professional limitation. Genuine feelings of sadness when not allowed to help.

Table # 3A

Thematic Abstraction of Bill's experience as a lawyer/divorce mediator

	Excerpts from transcribed interview	Two Levels of Abstraction *1. Paraphrases*	*2. Themes*
1.	That was the beginning on my doing matrimonial work and like anything else, well I hated it at first. ... It seemed to be a way to get into an area that was not occupied and guarantee my usefulness or utility around here.	Divorce work means to realize career ambitions.	Professional role– ambition.
2.	It seems to me that practicing matrimonial work in a large firm is very difficult, and those who do find themselves unhappy and frustrated. ... It's not *real litigation*.	Divorce lawyers unhappy and frustrated. Divorce law poorly regarded.	Professional role– perceives lack of status.
3.	I think in many large firms, the practice of matrimonial law isn't taken seriously.	Sees divorce law outside main legal area.	Professional role– perceives lack of status.
4.	other areas... people are coming to you with kind of a benign feeling. In matrimonial law... The clients kind of resent to you because they have to admit that there is a problem	Relationship with clients complicated by resentment.	Self awareness. Psychological stress.
5.	It's a very fast and emotional kind of bond including the fact that they do very much need you. They are asked to put their entire confidence about a very sensitive area in your hands.	Relationship with divorce clients based on need– one sided.	Professional role–confident of legal ability.
6.	So there you have a practitioner in the big firm who must defend his position or justify his position as a viable economic unit and the area of law being litigated generally is known to have a negative area more so.	It doesn't matter how good a lawyer you are you must bill to justify your place in a large firm even as a partner.	Self awareness. Psychological stress, financial status.
7.	You can't reasonably expect (given that neither side is really happy with the outcome of the divorce) with any regularity your clients are going to be satisfied that you have been there, that you have earned your age, as having a victor on the battlefield, their gladiator and so on.	Divorce lawyer must demonstrate active involvement and success for client.	Self awareness. Psychological pressure to win divorce cases.
8.	They're not themselves. I'm convinced six months either way of the dispute, these people are probably very nice people.	Clients not functioning at usual level and need help.	Respect for clients.

9.	You don't have the comfort of not having an environment that's not stressful because you're concerned about paying your way.	Both types of work (law and mediation) are stressful financially.	Self awareness– financial pressure.
10.	When you want to be able to give that client (commercial high yield) the service when he has a problem that colors his whole world and for which he'll be eternally grateful, but you want to be able to give him a break.	Recognizes need to keep the good-will of large client for good of the firm.	Professional role. Stress meeting to unspoken expectations of partners.
11.	So you find yourself doing divorces and other things for staff members, partners and associates at cut rates... usually far more complicated than your one shot house deal.	Worries about the time and work needed to provide service to firm which does not show on books.	Professional role– financial strain.
12.	He (every lawyer) can't afford to take every file to trial. You can't afford to take more than 10% of files to trial. So you've got to be a settler.	Aware that compromise is most effective for clients.	Professional role. Predisposed to negotiate and compromise.
13.	On the other hand, you can't be perceived as a settler.	Aware that reputation will suffer if perceived to be *weak*.	Professional role. Recognizes need for strong image.
14.	I'm pretty fortunate... I've got a high profile in this area of the bar and that's due in part to the things I did at an early stage in my practice to develop my profile.	Pleased with results of hard work, becoming known as divorce counsel.	Professional role. Ambitious. Proud of professional image.
15.	It kept me on the cutting edge of what was happening in my area. Result is that more than 70% of my practice comes from other lawyers because it's an area they don't practice in they feel it's beyond their depth sometimes conflict situations.	Hard work, self promotion resulted in being viewed as expert by peers.	Professional role. Pride in image as expert.
16.	That means there's already been screening process.	Referrals from lawyers a more affluent client, usually more educated and therefore preferable.	Enjoys working with people like himself.
17.	The fact is that I like it in a funny way. Not because of the money that I'm going to generate. I like the person to person contact.	Recognizes importance of financial aspect but would continue because he enjoys.	Enjoys working with people.
18.	I would never... I don't like it, I don't like how routine it is.	Does not like routine. Personal aspect of divorce lends interest and variety.	Self knowledge. Enjoys variety.

19.	Whereas man, in domestic matters, I see people and I see the crying, I see them mad, I see them face to face...	Clients are emotional but not all the same.	'Comfortable with emotion.
20.	I enjoy the variety.	Enjoys the differences in people.	Enjoys people.
21.	And, rather than me be their salve, it's a much more mutuous relationship where I can say here's what I can do and theres some things I can't do and there's some thing you'd better do for me because (a) I want you to and (b) it's economic for you to do this yourself.	Enjoys relationship with mediation clients more equal than as a divorce lawyer.	Respect for clients.
22.	And the other thing I like about it is the way that matrimonial law keeps me at the cutting edge of social reforms... I like being up front and seeing what's happening and what's new.	Interested in new approaches in his field. i.e. mediation.	Motivation–self knowledge. New ideas.
23.	I guess if I was just in the ocean some place paddling paddling paddling to feed a money machine, that's a dismal prospect... But it isn't dismal for me because I keep sort of a cutting edge. And so I find it very exciting and very satisfying.	Views self as different from other family lawyers because knowledge and practise puts him ahead.	Personal satisfaction from being first. Pride in professional competence.
24.	I'm the resource person. He's hanging on to my every word... It's an imbalance of power and I am the expert. I am his everything... I am absolutely essential to his well being, his carrying on and his success. So I've got to damn well be right.	Aware of traditional power imbalance and psychological stress associated with never being wrong.	Self knowledge. Psychological pressure.
25.	I have sense now, I think for how much therapy I need to do to do the bonding things and the confidence things and to impart to them a healthy concern.	Confuses minimal listening skills with therapy. Object is to show caring.	Feels confident about psychological skills. Perceives self as empathetic.
26.	I think some good old fashioned callousness helps. I'm much less empathetic in the sense of letting my client go and vent their spleen.	Will not allow mediation client to vent emotions for more than minimum period of time.	Controls process. Professional role.
27.	You have to be at least that detached I think, in some of the strategy you need in order to mediate the intractable situation.	Aware of strategies needed to mediate.	Objective.
28.	I've got enough of a balance now that I can prune all that and say no, here's what I need to know and here's why and here's what you need to know, here's what I want you to do.	Controls process by organizing stages of mediation.	Directive.

29.	I think that I'm very interested in people and I think I am empathetic and sympathetic. I want to help and I will take the time.	Self-reflective. Knows own qualities that encourage mediation.	Perceives self as empathetic.
30.	Some of these qualities, though lead me to be taken advantage of, overextend myself, spend too much time, not be as efficient as I might and so on.	Perceives self as disadvantaged by good qualities results in not doing as good a job as he would wish.	Self awareness. Ambiguous feelings re good qualities.
31.	I've found that difference very exciting in that it keeps my mind alive in doing this other stuff.	Mediation more challenging. Alertness required.	Stimulated by need to be mentally alert in mediation.
32.	It is very exciting and very liberating... because I don't have to take a whole hell of a lot of personal responsibility for it.	Pressure not as great in mediation because lessened feeling of responsibility.	Perceives clients as capable.
33.	It is very liberating because they understand that I'm there to facilitate them. They are imposing their own settlement on themselves and if they want to walk out, provided that they do so under the terms of the agreement... that's fine. I don't feel that I've failed.	Difference between responsibility in mediation and as lawyer. People responsible for own choices.	People responsible for own choices.
34.	I'm committed to it. (the process).	Believes in mediation.	Professional role. Committed to mediation.
35.	deteriorates into an extension of the pattern of abuse that the wife has received at the husbands hand throughout the marriage, and I don't want to see that happen.	Unhappy if clients do not respond in a responsible manner indicates loss of control of process by him.	Professional role. Responsible for process.
36.	I don't want to see that kind of suffering happening around me. I don't want to feel responsible for not having been able to better facilitate their creativity.	Sensitive to emotional pain. Sense of responsibility for controlling process.	Professional orientation. Responsible.
37.	There's no question, I haven't seen a couple yet that are not capable, much more capable than I or a judge in working out something that's going to be functional for them.	Believes clients can work to agreements better than lawyer or judge.	Views clients as capable.
38.	I may feel badly that another one slips through the cracks or there was some defect there that prevented it from going to closure but I don't feel the same way as losing a (divorce) client.	Successful mediation– closure. Responsibility of clients.	Views clients as capable.

39.	What is it you can live with? What works for this little relationship, to whether you are going to get every last farthing… entitled to after months of litigation. That's tough for people to understand.	Basis of agreement practical not picayune.	Professional role. Competence.
40.	I know some of my colleagues, some of my partners in the litigation area are really wigged out about. And that further isolates me from them. Next you're going to be talking Shirley MacLaine and all that stuff.	Other lawyers do not understand mediation, isolated from partners, defensive about mediation.	Self awareness. Isolation.
41.	I had to rationalize my getting into it on the basis that I think it's the way of the future. Somebody's going to be doing it and if it isn't me, it's going to be some other young aggressive person…	Obtained partners support by telling them it is an area that can be taken away from the legal profession. Likens mediation to accountants who specialize in tax law.	Self knowledge. Ambitious.
42.	But once I did get into it, I stared to do some thing… And I did buy into this notion…	After being exposed to mediation, emotional commitment began.	Change in world view.
43.	So the problem, I sense is that the legal process is not well equipped to address human problems… And I think that's what mediation is. It's a humane response to a human problem.	Begins to question the role of the law in divorce.	Humanist orientation to mediation.
44.	So they're going to have to hear it from the oracle and they have to pay their money… After they've lost their money… they will have this mail order fit for a very personal appliance.	People who reject mediation gamble on a judicial decision.	Professional role. Realistic when clients reject mediation.
45.	They have a verbal and superficial commitment to mediation (other lawyers). Having sent the clients to mediation, hoping the result would be something they could recommend to their client… forgetting that the objective was not to gain the highest and best return necessarily.	Sees problem with other lawyers referring clients duplicitously.	Value system. Querys some lawyers integrity.
46.	The thing that's been most important to these people wasn't what I thought from a legal perspective. It's been something completely ancillary that I would never have thought of, certainly no judge would ever have twigged to.	Realizes clients have personal agenda's that outsiders would not recognize.	Change in world view.
47.	He comes across being human, very, very, approachable… disarming in a lot of ways because he strikes you as being so human, so capable. He's very controlled. He's entirely unflappable and entirely accessible. Until you've gone a long mile with him, he won't cut you off.	Ideal mediator qualities human, approachable and calm.	Awareness of ideal mediator.

48.	I think one of the things about him (Haynes) is almost a kind of vulnerability... vulnerable in a sense but I wouldn't go as far as saying fallible.	Has thought about paradox of being vulnerable and effective.	Awareness of ideal mediator.
49.	The kinds of qualities that I sense that I'm able to bring to the task is a voice of calm, a voice of reason, a voice of control organization as far as reasonable... as wealth of experience but not as much as on the litigation size... Maybe a wealth of resources that can be accessed, like ideas and strategies, and here's what other people do...	Feel self is calm, reasonably controlled and experienced.	Self awareness of perceived strengths.
50.	He's very controlled, unflappable, effective. Me... if somebody bugs me bad enough,... how do you keep your cheeks from going red?	Contrasts an expert mediator with self.	Self awareness of inability to meet ideal.
51.	A lot of the preliminary things we go through I think will give them cause to trust you. The confidentiality of it, the fact that I'm not going to impose my will and I'm not going to tell them that they're being...	Recognizes trust established in preliminary stage.	Mediator orientation. Professional role.
52.	That's not what I'm about , it's not what I'm here for. If that's the feeling they get. Then I'm out of it, and I guess they're out of it and they're condemned to go elsewhere.	Feels its clients loss if they aren't able to negotiate.	Professional role. Confident of ability.
53.	There is a higher law than that, ... some sense of natural justice. There's some other rules of natural justice here... can't be compromised for the sake of having the war over.	Standard of fairness in settlement must be adhered to.	Value system. Mediator neutrality. Biased.
54.	And it's like your outside may be very calm, but you're taking sensor readings all the time about what's happening here, how is the wife... What's the body language... am I being sucked in by counsel... You're always taking sensor readings while trying to maintain this façade of being benign without any real valence...	Feels exterior self should hide mental alertness needed in mediation.	Recognition that he values mental alertness and enjoys analysis.
55.	She feels, oh God, it's another situation in which her husband is going to hurry to get the mediator on his side... And before you've even sat down, you're operating under that kind of situation...	Is area of power imbalance in clients and need to balance to attain trust.	Empathy.
56.	I feel it and I believe it... I find it very liberating and everything, notwithstanding that's it's a lot of work and you have to be more committed to the process than the parties are probably. To the process not the result.	Mental work is more taxing but thinks process is worthwhile.	Professional commitment.

57.	I guess my tactile response... is to obtain closure with a minimum of fuss and muss and as quickly as possible.	Successful mediation is agreement with little trouble to save cost.	Professional role. Goal directed.
58.	Philosophically, my objective is to ensure that the parties are able as far as practicable, to impose a regime of settlement on themselves that is a custom fit, is workable for them and is liable to have a long shelf life.	Successful mediation when parties make own agreement that they will abide by.	Professional role. Goal directed.
59.	I think you can make a hell of a difference to these people depending on how creative you are.	Takes responsibility for finding creative solutions to help clients resolve problems.	Lawyer quality– directive. helpful.
60.	It became very clear that I felt there was a greater than usual amount of hostility...	Recognizes emotional tone of clients.	Comfortable with emotion.
61.	When we started taking a side trip and start talking about some of the parties feelings.	Discussions about feelings not usual part of mediation process for Bill.	Empathy.
62.	It almost required me to go away and think about it and put myself in his shoes.	Recognizes need to understand each person's truth.	Empathy.
63.	We say my mind came alive... because you'd never usually get embroiled in those kinds of emotional level issues. (in law)....Getting there is half of the mandate and it really intriqued me.	Mediation allows freedom to operate on more than one level.	Self awareness. Mentally stimulated by emotional problem solving.
64.	The object was to survive, and I think in that case a legal remedy would have cauterized them... lots of opportunities to be creative in mediation because you're dealing with a problem on a much more human and human level than just being a surgeon and cutting up...	Examples of flexible solutions show how mediation is more satisfying in that problem solving can be possible.	Enjoyment of mental stimulation of problem solving.
65.	It really helps me if I get a story back or get them relating to me in examples because sometimes, like me they can't get their concepts across or their feelings... helps to give shape of their idea or a coloration as well.	Client generated metaphors help clarify client's thinking for Bill who also thinks in metaphors.	Self awareness. Creative.
66.	You have to consider what's in the children's global best interests, looking at all of the considerations, not just things that some people consider to be dominant.	Custody should be based on best interest of the child without restricting factors that might influence the choice.	Value system. Best interest of children.
67.	Every spouse, every natural parent has the fear that if they abdicate primary care, somehow their memory or their relationship will not be encouraged or nurtured.	Empathizes with parents concern that if the spouse has primary care, they will be forgotten.	Empathy.

68.	Only in the most extraordinary circumstances am I comfortable with seeings siblings split.	Acknowledges bias that siblings not be separated.	Self knowledge– aware of biase. Value system– best interest of children.
69.	I probably suspected every client's motive's initially... A process of telling... to see how committed they are to it, if they've thought about it or whether it's a reflex... (child custody).	Bill's feelings about best interest make him alert to manipulation by client.	Professional role. Resists manipulation
70.	The unfortunate place that we got to was that regardless of whether or not the fears were justified, and they were not, they were real.	Understands clients perception of truth.	Empathy.
71.	I guess I feel that way about just about all of the mediations I have done,... ultimately the result has been a custom fit... and a more human result.	Proud of humane agreements.	Value system. Humane solution.
72.	during the course of the dialogue you have been seeing little indicators... they're changing their orientation.	Recognizes that observation and listening skills essential to understanding.	Communication.
73.	(to have both clients trust you in a short time)... it's been a case of being really natural... being fallible, and being vulnerable.	Effective mediation depends on using the self.	Genuine.
74.	trust... to listen real good to what's being said and to try not to be superior.	Recognizes listening skills and self essential to trust.	Listening skills. Respect for client.
75.	In mediation part of that (letting clients vent emotions) is therapy and part is getting out some of their concerns.	Patient with clients need to weave feelings with explanations.	Comfortable with emotion.
76.	I think you have to (understand each persons point of view) because that's the only way to communicate effectively.	Effective mediation is effective communication. Needs ability to understand both persons point of view.	Polycentric empathy.
77.	I've seen not as much interest or fervor or as many referrals...	Concerned about future of mediation.	Professional role. Commitment to mediation.
78.	Some lawyers prostitute the mediation process in paying lip service to it... And I think that intellectual dishonesty.	Ethical responsibility of legal profession eroded.	Value system.

79.	It won't work for everybody seeing people come to it with not the right motivation (failure).	Realistic about population served.	Professional role. Realistic about clients.
80.	Need some personality to wield some control and wield some power. If you don't you've got... little more than a therapist... listen and bleed...	Mediator must be task oriented. Subjective evaluation of psychotherapy.	Professional role. Task orientation.
81.	I'm not sure whether that's a study in psychology... need for a practical insight of human nature.	Effectiveness depends upon psychological skill.	Self awareness that effectiveness depends on psychological skills.
82.	Something I think you've really got to work on are some of those kinds of skills that are important ,tricks of the trade that are psychological things.	Recognizes that psychological skills need practice.	Open to experience. Willing to learn.
83.	I think you have to have a personality that is malleable enough that you can get into individuals and let down some of the barriers.	Openness needed to communicate.	Genuine.
84.	One of them (flaws) is that sometimes I get really impatient with the process... and I fidget... want to summarize too often.	Dissatisfied with aspects of self as mediator.	Self awareness if dissatisfaction with aspects of self as mediator.
85.	Mediation is a much more complicated process of brokering feelings and all of the other elements of human relations, and you've got to be respected and liked in a curious kind of combination or it's not going to work.	Success contingent upon personal qualities.	Self awareness that success contingent on personal qualities.

Table # 4A

Thematic Abstraction of Pam's experience as a lawyer/divorce mediator

Excerpts from transcribed interview	Two Levels of Abstraction *1. Paraphrases*	*2. Themes*
1. I've actually recently made the commitment to stay in divorce work.	Ambivalent feelings about being a divorce lawyer forced a re-appraisal and recommitment.	Professional commitment.
2. I know it is (considered a Jonah) We're coming up to our night of the long knives which is next week.	Divorce work considered the *Jonah* in most law firms.	Professional orientation aware of stigma of divorce work.
3. ...interest to me in particular because divorce work doesn't produce the same kind of income in a firm that deals with banks, insurance companies and the plaintiffs.	Divorce work not as profitable as other areas.	Professional concern about income.
4. Those people are in the position to bill substantially more in legal fees than I am, although I do fairly well. So there's always the thing of, am I able to pull my weight, how much of the income that I bring in should I receive in my own pocket and do I want to change?	Recently reassessed career in light of time and effort compared to income.	Professional pride. Contributes to the firm Awareness.
5. Well, I like dealing with the clients. Mind you, I've done it for over ten years so I'm starting to get a kind of clientele that's easy to enjoy. They're pretty bright, decent human beings.	Enjoys clients similar to self (Rogers) intelligent and decent people.	Respects clients.
6. I like going to court and you get to court all the time in divorce work. It's constant because there's so many things that you need to look at. Like negotiating.	Enjoys mental stimulation of court work.	Enjoyment of mental stimulation.
7. The area's constantly changing. It's constantly responding to different social needs, and so it's interesting.	Work interesting because it has implications of social values.	Motivation. Social conscience.
8. The narrowness of the field serves me really well right now in my life and my career, this type of work.... I would rather be at home with my kids than researching the law every night. It's also because of the nature of the work being high overturn.	Work allows professional competence and time at home to co-exist.	Value system family. Professional Orientation competence.

9.	There's a certain amount of challenge in just dealing with people and judges every day, and lawyers, and it's very social practice and I think that's important to ,... its just that social end of the practice that's fairly satisfying.	Challenge in variety of people. Socially satisfying.	Value system. Satisfaction from dealing with people.
10.	It definitely gets on my nerves and I've been real close to burning out at various times in the last several years of my practice. But if it's well managed, it does more for me than against me.	Honest about reasons for staying in divorce work.	Eloquent, genuine.
11.	A lot of lawyers would rather be drafting lawsuits or whatever. I like and thrive on– a certain portion of my personality thrives on interpersonal contact.	Enjoys people in work world.	Social contact.
12.	I prefer to do it where I meet the client, I get to know them, and generally the clients come to me who want this kind of personalized service.	Offers personal interest in divorce cases.	Professional Orientation..
13.	So yes, I think I am responding to something inside me that wants to please others. I'm very critical about how I present cases to a judge for example, and I won't let my client fox me into saying something that I think is ridiculous, because I don't want the judge thinking I'm being ridiculous.	Recognizes need to please others. Not just clients but come up to expectations of judges.	Self-awareness.
14.	Decided I wanted to try family law. At that point, I decided maybe I'd like to serve people. Maybe this will do the trick. I can't stand this other stuff. It just keeps crystalizing for me more and more and more.	Sees divorce work as a service to others.	Value system. Social contact.
15.	And it doesn't mean being an unobjective person doing what the client tells you to do. It means offering the best service and making them feel like they're cared for,.	Recognizes importance of objectivity in family law.	Empathy.
16.	During that period of time is when I became interested in mediation and the style of my clientele changed. I grew to like more of them. As you get more experienced, you attract a different style of clientele. They're here to do it without the need of the legal system. That's the kind of client I like to have.	Experience brought clients more suitable to mediation.	Respect for client.
17.	I learned a lot about negotiations as well as mediation from his. And that– it just seemed like such a viable alternative, I just got right into it.	Began to consider mediation as an attractive alternative to litigation.	Change in world view.

18. Since then I have recognized that there's a lot of people who come to see lawyers who are not the least bit interested in mediating and you have to be careful about who you make that sort of referral to. I recognize more that there's only a small portion of the population that will benefit.	Realistic about possibility that not all people suitable for or wish to mediate.	Professional limitations.
19. What came clear to me was that although the husband appeared to be holding the power and be the one who was undermining the process, the wife just wasn't willing to agree to anything.	Able to see beyond surface to analyze what is happening in sessions.	Enjoyment of analysis.
20. I'd say a failure just because we didn't conclude the agreement.	Failure agreement not signed.	Professional Orientation definition of failure.
21. I think I called it right (failed mediation) and I've had feedback from both the clients in response to my request, they paid my bill, that they were totally happy. It was a wonderful experience.	Sense that failure not so bad if clients experienced some personal growth.	Therapeutic orientation. Aware of secondary goal.
22. But they still hadn't concluded their deal, and it may be that they just don't want to conclude it.	Recognizes and accepts couple enmeshment.	Experiment of analysis. accepting.
23. The mediator has to have the lawyers willing to make a recommendation or support to some degree a mediator's experience.	Aware that lawyers influence clients.	Professional concerns.
24. If clients come to me, I'm going to tie up all those little extra issues for them and they'll go back to their lawyers with them all tied up. So the holes won't be there hopefully.	Pride in professional competence.	Professional pride.
25. It may on the other hand be a lawyer saying, well, this isn't what I wanted, and that's where you get into the lawyer that does not support the process. That happens fairly frequently.	Aware that lawyers use mediation as a tool towards a more advantageous settlement.	Professional concerns.
26. But mediations are very time consuming and we usually meet on a weekly basis for a couple of hours and that's a lot of time per week on a file, on a weekly basis. I find it to be quite hard work.	Mediation more difficult and more time consuming.	Professional challenge.
27. The divorce work is much easier from the point of view I meet with the client, I control the interview, I'm in the discovery doing what I know how to do and reading letters.	Sees self as competent divorce lawyer.	Professional competence.

28. The mediation work is on-site. It's highly charged virtually all the time, and if it's not, they usually can do it by negotiation and don't need to mediate. It takes a lot out of you.	Mediation professionally challenging but emotions of conflict uncomfortable.	Professional Challenge uncomfortable with emotions.
29. So I feel a very strong obligation to as quickly as I can answer their questions. I'm just firing the stuff up on the board. As long as they're following and balanced. So I put a great deal of pressure on myself to produce that, make sure they've got their homework at the end of the session and know exactly what they're going to do.	Sense of responsibility to be as efficient as possible to save clients expense.	Professional Challenge– uncomfortable with emotions.
30. Then there's also this emotion, the question sort of emotionally loaded about what happened in the marriage, the accusations, and you just want to sort of brush that aside and get on the issues.	Uncomfortable with emotions. Goal directed.	Uncomfortable with emotions. Professional role goal directed.
31. That was tough, I think, to deal with when you've got the other side in the office too. It's one thing to sympathize and care for your client. It's another thing to try and balance that or get rid of it.	Difficult to balance empathy between both clients. Feels lack of psychological experience.	Empathy.
32. Very hot emotional type of mediation. Sometimes a psychologist might be better in the situation, I don't know.	Feels a lack of psychological experience.	Congruence.
33. My lack of training in the psychological arena of drawing people out, in using some of the mediation techniques to get them to whatever it is, reality tests or search within themselves for the right answer, whatever it might be.	Aware of lack of psychological skills.	Recognizes lack of skills.
34. I can get them right on the money real fast and down to what's necessary to conclude those issues. and keep them pretty balanced emotionally, both being strong at the same time, so I've got the ability there.	Feels confident mediating financial issues using some psychological techniques.	Professional competence.
35. So I just don't offer to mediate custody issues over.... those people or to other private psychologists who are mediating custody with the explicit instruction not to touch the money.	Refers custody cases.	Professional competence.
36. Money's sort of a special child in itself because of different emotions attached to it.... They're hooked and the money issues are hooked with the children's issues, not just because kids cost money. And power, that power, it's hard to mediate the one in the absence of the other sometimes.	Recognizes that it is difficult to separate children from money issues because of the power children represent.	Professional Orientation.

37. Sometimes it an absolute Vesuvius type blow up.... Personally, I tend to cringe is my first reaction. To fortify myself, listen and they try to.	Uncomfortable with expression of emotions.	Uncomfortable with emotions.
38. It may get lost by them, but not by me....I may be shaken by the strength of the response.... But that doesn't mean I'm unobjective on the issue.	Perceives self as objective.	Counselor Quality– empathy. Self-knowledge.
39. The thing that gets me is tears. I see somebody who's being devastated and who has a terrible story and I often have felt just like crying with the person. It does get me, particularly where there's a real hurt on both sides and one party's expressing. You just know that they're hurt and that gets to me.	Empathetic to unhappiness.	Counselor Quality– empathy. Self-knowledge.
40. I find it harder to kind of draw back and say, okay, I've got to set this aside.	Sometimes has difficulty maintaining objectivity.	Self-knowledge.
41. Anger is one thing, the real hurt is another. But you still have to do it. You have to, to some degree, experience it. You can't be totally insensitive to it.	Recognizes empathy important.	Empathy.
42. You have to acknowledge it, verify it, and then get on with the issues, the objective.	Recognizes that explicit acknowledgement facilitates mediation process.	Professional role. Goal directed.
43. In those emotional messages, there is a kernel that's necessary, an issue that you have to bring out and put on the table.... It's a lot harder to pick it out if it's delivered in a very emotional way.	Because of her discomfort with expressed emotion, Pam has trouble finding the problem.	Self awareness analysis.
44. I experience it in the moment but I force myself in a way to draw back to get on with the task. I mean I've been in tears in a mediation session, and I say listen, I'm moved by that but we have to whatever the situation requires.	Aware of clients experience but consciously maintains objectivity.	Objective empathy. Professional Role– goal directed.
45. I acknowledge it. I often tell them that I've been feeling what they're feeling.... I try to let them know that I am hearing not only the message which is important, which I try to think of to say but also the emotion.	Makes conscientious effort to convey empathy.	Empathy.
46. They feel like I'm hearing all their emotions and the other sides eventually going to say to themselves, if she's starting to listen to all of this, where does that leave me? There has to be a really high level of trust, yeah. And willingness to mediate.	Aware of the need to balance attention between clients in mediation.	Polycentric empathy.

47. There has to be an ability to handle the issues and part of that is learning about the issues and being somewhat bright and capable.	Cognizant of kinds of clients who do well in mediation.	Professional role. Limitations clients as capable.
48. The second is willingness. They've got to really want to mediate. I have not been successful mediating people who just don't want to be here.	Aware that motivation to mediate powerful.	Professional Role. Limitations.
49. The third thing is for me to convince them that I'm the right one and that's where this level of trust is available. I usually do that in my first session to the extent that they're going to allow me at my rate.	Recognizes first session testing of Pam as mediator.	Self awareness.
50. I tell them a little bit about my divorce work and that I've acted for both sides and that I'm not here to do that.... and that I'm going to encourage them to talk to their lawyers throughout the process so they feel like they've got that support system behind them as well.	Encourages trust by professional attitude and information towards clients.	Professional orientation.
51. I don't declare my position I will give the, if they ask, some legal information on what the courts are doing and about certain things, about what the current law is.	Does not disclose biases but gives information in unbiased manner.	Objective.
52. If we're sort of negotiating towards something that I think is manifestly unfair I won't go on with it, and I tell them that.	Recognizes mediator neutrality can be compromised by unfair practice.	Mediator neutrality based on concept of fairness.
53. Marriage is a private contract.... mediation is a viable alternative to looking at a private order rather than publicly imposed resolution of problems.	Strong belief in private ordering of marriage.	Belief system. Private ordering.
54. They're making people be responsible for their own house and I think that's good. It gives them a feeling of well-being, a sense of power, a thin, to be able to come and say, look, we want to do this, we don't want some judge doing this but we need help.	Responsibility empowers clients.	Views clients as responsible.
55. My experience talking to couples that they don't ever think they're going to be the one that ends up having that experience to go to court.	People always feel that they will be the winner in a court battle.	Professional orientation.

56. Especially to the older ones, whose kids are grown, no power whatsoever, no control over money, no job, no memory of any of the financial details. They just feel terrible. And just having to get up and say this is me, it's just devastating for her. There's something that kind of levels it off there so they participated.	Feels that women who are vulnerable not suited to mediate.	Value system. Empathy.
57. There's just a strength there and I'm speaking mostly of working women that doesn't exist in other women who really just don't have the self esteem to– they don't have the ability or they don't think they do. It's not because they don't. They don't believe they do. And I don't refer those people.	Follows act– mentions alternative dispute resolution and reconciliation.	Value system.
58. I tell everybody when they come in the door what the options are and I make recommendations on what I think they should do, to the extent that I can. But I often will suggest that people consider it, go and think on it for awhile, but I always mention it.	Will not mediate for divorce client.	Value system.
59. If they're at all interested, then I tell them that I won't mediate for them because I've seen them as divorce clients– they have to get their spouse to agree to go to a third party on record, various people.	Believes mediation preferable.	Professional commitment.
60. I think that a settled dispute, as long as it's a fair one, is far better for most families, or husbands and wives if there's no kids, than a litigator. and it's less money in my pocket but I don't care. I've got all kinds of clients dying to get in here. And where there are kids in issue and two people who seem to be saying good things about–... the other ... And I'll encourage them.	Mediates custody first so parents able to think about plan issues.	Therapeutic orientation. Best interests of children
61. People, the ones with children, and I'm thinking of kids here, it's a hot issue, that they don't want to litigate, but they can't agree on. They can't settle down and think about the rest until they're secure in knowing they're going to parent their child X or Y. That's what I felt. What I usually do is go over all the issues with them and try to pick out the toughies and the easy ones and kind of choose my own map. I'll often, if it's the first, right at the beginning.	Tries to settle important issues first to give clients peace of mind.	Therapeutic orientation.
62. People have to live while they're going through this so you have to respond to the survival issues first. Emotional survival, will I see my kids, the financial survival.	Tries to settle the most serious problems financial and family first to give some peace of mind for clients.	Therapeutic orientation.

63. In a mediated situation, I tend to work towards something that I think will work for both. If they're both a little unhappy, that's a good sign and good settlement. The money but the caring for herself started to happen in the other areas too.	Works towards a fair goal that she has decided upon.	Mediators form sense of personal fairness.
64. I was so frustrated. I found it frustrating. But that's part of the caring and the dealing with people that you have to be very careful to do in mediation.... But it was so nice to be able to say, ah, you finally decide to take care of yourself.	Finds personal growth process of clients frustrating but satisfying.	Therapeutic orientation.
65. She was experiencing what mediation was for. She was empowered by a process and it was a very engaged agreement, very successful mediation because of her growth. So that was a good experience.	Derives satisfaction from seeing clients personal growth.	Finds secondary goal of mediation satisfying.
66. I remember one particularly where it was very successful and done in a very compressed way and I just hated it. But we got our deal and... it lacked a connection with people somehow... underlying feeling... I'm not sure what it was, it wasn't addressed. Hostility or something.	When agreement reached but underlying issues not resolved Pam finds less personal satisfaction.	Successful agreement not satisfying if secondary goal not met.
67. My faith in the correctness of it has continued to develop. But I've always been fairly sensitive that way to other people.	Uses senses, consciously develops and relies on intuition.	Uses self.
68. I think a lot of the rapport I have with my own clients comes from that.... I think you're feeling this now... That gives them a real feeling of being understood.... It's something I enjoy using.	Recognizes power of being understood and enjoys that rapport it gives with clients.	Empathy.
68. I guess that feeds into... me liking to do this for people. It's partly because it comes back to me as being what I've been right. Or I can use that part of me every day in my practice. It's very important to me to acknowledge the people in the courthouse.	Enjoys the added dimension relying on intuition gives to her life.	Self awareness.
69. It is very, very central in my life, very important. Even internally. I like to know what I'm feeling about various things of what I'm doing.	Pays attention to own feelings.	Self awareness.
70. I usually sense some way part through whether they're really ready to walk from this marriage or whether they're just really anxious to hang on or just devastated by the thought that the other side wants out.	Uses observation skills and senses to decide clients emotional state.	Observation skills.

71. I think my duty as a lawyer, again I go back to the Divorce Act, is to canvass reconciliation and if there's a chance that this marriage is going to succeed and my client thinks there's a chance, then I want to give them the opportunity to have that fully canvassed with the other side.	Feels obliged to explore possibility of reconciliation with clients.	Professional orientation.
72. If they're just asking for a reconciliation so they can postpone the divorce for a couple of years to squirrel away the property, and I've had people come in and say that, we get to the bottom of it very quickly.	Will not tolerate manipulation of law or spouse by clients.	Value systems.
73. Most of that is just in my development as a professional, becoming more experienced more confident in my work, realizing– I've had kids within this time as well, and realizing there has to be balance to life. Integrating it into my life scheme.	Strives for a well balanced life.	Congruence.
74. The kernel is there. I feel very connected to the person I was when I chose to do this.... and burned out quite badly. And I wasn't really thinking about much other than practicing law. And got pretty disconnected from a lot of life.	Has experienced disharmony from working too hard and has returned to the person that she feels she has been.	Change in world view.
75. It keeps coming back to this wish to work with people and the service profession and the duty of the lawyer to serve and all that kind of stuff.	Returned to ideals of legal profession and personal ideals.	Value system.
76. I do generally believe that people are capable. If they need help I'll... get involved.	Believes people capable but need help.	Views clients as capable.
77. I act for lots of people whose philosophies are different. That's not a problem, but if they are not willing to listen to me or they say they'll do something and then don't or if they lie to me, those types of things, I don't want them in my life.	Unbiased but sets personal limits for clients.	Professional orientation. Counselor Quality– non-judgmental.
78. I think it's good to have a theory.	Bases work on theory acquired in workshop.	Professional competence.
79. They become more relaxed. They use human warmth, sometimes. Sometimes you can see a visual relaxation. They start to sit back in their seat and speak louder and small things like that. You can when they are upset.	Uses observational skills to decide state of mind for the client.	Observational skills.
80. Was a co-mediation psychologist who spent sometime with the wife in helping her realize that she was going through these stages.... Very satisfying, very productive. It's a good mediation that it has stood the test of time.	Finds mediation satisfying when productive, personal growth and works for a long time.	Professional Orientation– most satisfied when both goals of mediation are met.

81. Now I am involved in organizing almost a communication workshop which is important to this firm. With the lack of it I have decided that no one else is going to do it I've got to do it. I have to get the rapport going here.	Uses communication skills to benefit others and strengthen firm.	Value system.
82. I am certainly listening on a intellectual level and there usually there has been a whole bunch of senses, sensual type clues before that, that something is not right. Sometimes it will be a total voice that I hear. Sometimes it will just be somebody moving forward in their chair, getting on the attack, sometimes it might even be a facial expression or looking down, a little bit of body movement, uncharacteristic to what is going on.	Evaluates using multi clues observed in clients.	Objective-evaluative works on two levels.
83. But there are also lawyers who are encouraging clients to go to mediation because to give it some more time with the kid. Don't worry about it. All it does is make that case stronger. And I think that's dishonest. Now when I say dishonest... I am not saying they are practising law improperly,... it just a kind of moral dishonor.	Sees lawyers who use mediation for manipulative purposes are intellectually and morally deficient.	Value system.
84. If that lawyer is absolutely opposed to mediation there is no way. Doesn't matter what you do. Very adversary, very controlled because that is what they need at this stage in their lives. They can go to mediation because the lawyer says go on and they know darn well that they are just stopped.	Recognizes influence of lawyers over clients.	Professional limitations.
85. I like meeting with people. I like getting to know them and I enjoy watching people relate. That is different from what I see in my office. Most of the time. It is me and the client. And in mediation it is refreshing to see these unusual ways that people communicate.	Enjoys working with more than one person.	Enjoys mental stimulation of more than one person.
86. I have a feeling there is a little more honesty in the mediation process then there has been in the marriage for a while. They get surprised by each other sometimes and that is sort of fun. If the mediation is successful, there is often a feeling of being attached. Little success mean a lot to the people who are involved. That is so nice to go home with, with a smile at the end of the day.	Enjoys progress made in mediation when people work well together.	See people as capable.
87. But yeah so I suffered a lot over that one. Suffered in my own personal life with the point of view that I can't believe I let that happen.	Worries that a mistake caused mediation to fail.	Professional Orientation–responsible for process.

88. I mean I see it as a wonderful learning experience,... We need more experience.	Willing to learn.	Open to experience.
89. It doesn't matter if I win or lose I'm always critical of what I'm doing.	Evaluates own performance.	Self awareness of performance.
90. And yet you believe though people, I remember talking about this, have the responsibility for their own actions. They do, but I still have a responsibility that comes out and is allowed to count for the process.	Believes people responsible for own actions but sees self as responsible for the process.	View clients as capable.
91. The first quality in a good mediator would be, like I said they would have to be a good communicator, they would have to be able to listen well and be responsive as to what is being said. by that it may be by saying nothing, appropriate response. So good communication skills would be number one. They would have to have some patient.... somebody who these people feel they can confide in almost like the Dr. Welby type image. They have to have, be very sensitive. They have to be able to pick up on the feelings that are in the room and be able to show that quite quickly they understand. Genuine openness.	Feels mediator, including self must be good communicator. Patient and be trustworthy. They must possess counselor skills based on knowledge, be genuine and open.	Ideal mediator.
92. You still have to be removed from the process so there has to be an ability to separate the task and the people from that work. Has to be task oriented. You have to get on with the job so your going to give directiveness in a sense. I think that knowledge, there is a certain amount of knowledge that is needed to and I was going to say earlier knowledge of the subject area of the mediator.	Feels mediator should be objective, task oriented and to some degree directive.	Professional Orientation–objective. Task oriented direction. (give alternative suggestions).
93. You have to be able to understand through various communication skills each person.	Recognizes the need to understand each person within a balance.	Polycentric empathy, neutrality.
94. I believe that very strongly and I think that if we don't sort of settle down and start to do more things in mediation and real conflict resolution everybody... our society is doomed. Literally I believe that and I think a lot of other people agree because not so much really me, but are sensing a similar type of thing because even the largest American companies are mediating.	Believes mediation important as a societal device.	Value system.
95. The exercise of power through us as instruments is destroying these people in the family. But when you get into a real big fight over kids or something that is too petty,... the exercise of power is devastating.	Believes mediation important in the best interests of the children and family.	Motivation. Best interest of children. Human for individuals.

Letter of Consent

To whom it may concern:

I understand that I have been selected as a candidate for an investigation into the shared qualities of effective divorce mediators.

I agree to two or three in depth interviews by Betty Stevens-Guille, which will be audiotaped and transcribed for analysis and used as data for her Masters of Education Thesis.

I have been assured that my participation in this study is to be anomymous in that my name and identifying characteristics will be changed and will remain confidential. I agree to act as a co-researcher for this study.

Date

Signature